

945  
No. 2583

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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DAN D. SUTHERLAND,

Plaintiff in Error,

vs.

F. W. PURDY,

Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court  
of the Territory of Alaska, Third Division.


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Filed

OCT 10 1915

F. D. Monckton,

Clerk.



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United States  
Circuit Court of Appeals  
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Upon Writ of Error to the United States District Court  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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**Names and Addresses of Attorneys of Record.**

*In the District Court for the Territory of Alaska,  
Third Division.*

Mr. E. E. RITCHIE, Valdez, Alaska,

Mr. O. A. TUCKER, Juneau, Alaska,

FRANK FOSTER, McCarthy, Alaska,

T. J. DONOHUE, Valdez, Alaska,

Attorneys for the Plaintiff *in* Plaintiff in  
Error.

MAURICE D. LEEHEY, 817 Alaska Bldg., Seattle,  
Wash.,

Attorney for the Defendant and Defendant  
in Error. [1\*]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Order [Permitting Plaintiff to File Amended  
Complaint, etc.].**

THIS MATTER coming on to be heard on motion  
of plaintiff for leave to file Amended Complaint, and  
the Court being fully advised in the premises,

IT IS HEREBY ORDERED that said plaintiff be,

---

\*Page-number appearing at foot of page of certified Transcript of  
Record.

and he hereby is permitted to file his Amended Complaint.

And pursuant to stipulation made in open court, IT IS FURTHER ORDERED that the Amended Answer of defendant now on file be, and the same is considered as the Answer to Plaintiff's Amended Complaint, and that all the allegations of Plaintiff's Amended Complaint be considered as being denied by the said Amended Answer.

Dated this 18th day of March, 1914.

FRED M. BROWN,  
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 18, 1914. Arthur Lang, Clerk.

Entered Court Journal No. C-2, page No. 172. [5]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

### **Amended Complaint.**

COMES NOW the above-named plaintiff and in compliance with a recent decision of the above-named Court, and after leave of Court first had and obtained, files this, his Amended Complaint; and for



cause of complaint alleges as follows:

I.

That the plaintiff, Dan D. Sutherland, was at all the times hereinafter mentioned, qualified to locate mining claims in the Territory of Alaska, and to hold, own and possess the same; that Dan D. Sutherland and Dan Sutherland are one and the same person; that on August 30, 1913, said plaintiff located pursuant to the laws of the United States and the Territory of Alaska, a certain placer mining claim, known as and called the Surprise Fraction Mining claim, hereinafter more particularly described, and signed his name to the location notice, and located said claim as Dan Sutherland.

II.

That on the 30th day of August, 1913, said plaintiff went upon the unoccupied and unappropriated public domain in the Territory of Alaska, in the White River Mining and Recording District, at a point on Big Eldorado Creek, a tributary of Wilson Creek, which is a tributary of Chisana River, about one and one-half miles from the mouth of said Big Eldorado Creek, and located a certain placer mining claim on said Big Eldorado Creek between A. F. Nelson's No. 2 below discovery, and Richard Bell's No. 3 below discovery, embracing a tract of land 1300 feet up and down [6] said creek, and 330 feet on each side of the center stakes of said claim, and named and called said mining claim Surprise Fraction, bounded and described as follows, to wit:

Commencing at the Initial Stake, which is the upper center end stake and is placed at or near the

lower center end stake of A. F. Nelson's mining claim called No. 2 below discovery on Big Eldorado Creek, and running thence 330 feet northerly to stake No. 1; thence 1300 feet westerly to stake No. 2; thence 330 feet southerly to lower center end stake, which is at or near the upper center end stake of Richard Bell's No. 3 mining claim below discovery on said Big Eldorado Creek; thence 330 feet southerly to stake No. 3; thence 1300 feet easterly to stake No. 4; thence 330 feet northerly to place of beginning. And appropriated and claimed said placer mining claim by reason of said location and under and by virtue of the laws of the United States and of the Territory of Alaska.

### III.

That before making said location, to wit, on the 30th day of August, 1913, said plaintiff made a discovery of gold-bearing placer ground, carrying gold in workable quantities, at a point within the exterior boundaries of said Surprise Fraction mining claim as hereinabove described; that at the time of making said discovery he posted conspicuously at the point of discovery, a notice of location thereof containing (a) the name of the claim, to wit, Surprise Fraction Mining Claim; (b) the name of the locator, to wit, Dan Sutherland; (c) the date of discovery and posting of notice, to wit, the 30th day of August, 1913; (d) the number of feet in length and width claimed, to wit, 1300 feet long by 660 feet wide; and in all other respects complied with the laws of the United States and of the Territory of Alaska in regard to making discovery and posting notice of location.



That at the time of posting the notice of location he distinctly [7] marked the location on the ground so that its boundaries might be readily traced, by placing at each corner or angle thereof, substantial stakes or posts not less than three feet high above the ground and about three inches in diameter, and hewed on the side facing the claim. And each of said posts was marked with the name and number of the claim and the designation of the corner by number, and the corner post nearest the discovery monument was marked Corner No. 1, and the other corner posts were marked in regular rotation. This claim was located on open ground and the side lines were marked by stakes so as to readily lead from one corner to another of such claim, and in all respects the boundaries of said claim were marked as required by law; that within ninety days from the date of said discovery, and prior to the filing of the certificate of location, the said locator performed or caused to be performed, labor upon said claim in developing the same, in amount which was and is equivalent in the aggregate to One Hundred (\$100) Dollars' worth of such work, based on the going wages in the White River Recording Precinct, which said work constituted the location work as required by the laws of Alaska; that thereafter, within ninety days after discovery, to wit, on the 7th day of October, 1913, the locator caused to be recorded in the precinct wherein such claim is situated, a certificate of location, which certificate contained the name of the claim, the name of the locator, the date of discovery and posting of location notice, the number of feet in length and

width claimed, to wit, 1300 feet in length and 660 feet in width. Such certificate also set forth a description of the location of such claim with reference to natural and permanent monuments and well known mining claims, a description of the boundaries, corner posts and markings thereon, and a description of the location work and the place where the same was performed. Said certificate of location was verified by the plaintiff and locator before a [8] notary public authorized to administer oaths. Said certificate was filed for record on the 7th day of October, 1913, by Dan Sutherland, the plaintiff and locator, and recorded in volume 1, page 250, of the Records of the White River Recording Precinct, Territory of Alaska.

#### IV.

That said plaintiff did not during the calendar month of August, 1913, or during any other month in said year, locate or cause to be located in his name more than two mining claims in the Territory of Alaska.

#### V.

That the nature of plaintiff's estate in the land embraced in and covered by the said Surprise Fraction mining claim is that of owner of a legally located, unpatented placer mining claim; that the fee of said land still remains in the United States Government; that the said plaintiff is the owner of the said land and premises under and by virtue of his location and appropriation and the mining laws of the United States and the Territory of Alaska, and is entitled to the immediate possession of the

same and the whole thereof.

VI.

That plaintiff being in possession of the land embraced within the exterior boundaries of the said Surprise Fraction mining claim as aforesaid, the defendant on or about the 3d day of September, 1913, unlawfully and without right entered into the possession of said land and premises and ousted plaintiff therefrom and ever since has, and now does, wrongfully and unlawfully withhold the possession of said land and premises from this plaintiff to his damage in the sum of \$1,000.00; that the defendant ever since said date has acted as and claimed to be, the owner of the land and premises embraced within the exterior boundaries of the said Surprise Fraction mining claim as aforesaid [9]

WHEREFORE plaintiff prays judgment against the defendant for the restitution of and the possession of the above-described mining claim and premises and the whole thereof, and for damages in the sum of \$1,000.00 for the wrongful and unlawful withholding of the possession of said mining claim and premises from this plaintiff, and for his costs and disbursements in this action.

T. J. DONOHUE,

O. A. TUCKER,

Attorneys for Plaintiff.

United States of America,  
Territory of Alaska,—ss.

Dan D. Sutherland, being first duly sworn, deposes and says: I am the plaintiff named in the foregoing Amended Complaint; I have read the same and know

the contents thereof and the same is true as I verily believe.

DAN D. SUTHERLAND,

Subscribed and sworn to before me this 17th day of March, 1914.

[Notarial Seal]

O. A. TUCKER,

Notary Public for Alaska.

My commission expires July 28, 1917.

Service of the foregoing Amended Complaint is hereby acknowledged by receiving a copy thereof on the 17th day of March, 1914.

J. J. FINNEGAN,

Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Mar. 18, 1914. Arthur Lang, Clerk. [10]

---

*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Amended Answer.**

The defendant by order of Court herein entered, files his Amended Answer as follows:

**I.**

The defendant denies every allegation contained in

paragraph I of said complaint.

II.

The defendant denies every allegation contained in paragraph II of said complaint.

III.

The defendant denies every allegation contained in paragraph III of said complaint.

The defendant for a further answer, and as an affirmative defense to the cause of action stated in the complaint, alleges as follows:

I.

That at all the times stated in the complaint, and ever since July 6, 1913, the defendant was and now is the owner of and entitled to the possession, and during all of said time was and now is lawfully in the possession, by right of discovery and location in accordance with the law and local customs and regulations, of that certain placer mining location situated within the White River Precinct and Recording District of Alaska, designated as No. 2 Below Discovery on Eldorado Creek, a tributary of Wilson Creek, which latter creek flows into the Shushana River, [11] designated by the United States Geological Survey as the Chisana River; that said placer mining location was initiated by a valid discovery of placer gold made by one G. L. Gates as the agent and attorney in fact for and on behalf of this defendant; that said discovery was made on or about the last named date at a point now included within the limits of the placer claim herein named; that immediately after said discovery, and on the same day, the said Gates duly posted notice of such location on behalf



of this defendant, designating the claim as No. 2 Below Discovery on Eldorado Creek, and marked the boundaries thereof by proper stakes and monuments so that the same could be readily traced; that not more than two placer mining locations were made by or on behalf of this defendant within the Territory of Alaska during the said calendar month, or during any calendar month.

## II.

That this Court, by its order herein entered on May 7, 1913, created the White River Precinct and Recording District of Alaska, including therein the region wherein such location was made and where the ground in controversy in this action is situated; that a recorder was appointed for said district, but the exact location of the recording office therein was not designated; that the district so created included practically all of that portion of the Third Judicial Division of Alaska which lies north and east of the summit of the Alaska Range of mountains; that there are no towns whatever situated within said district, and no roads or established trails whatever into or across the same; that the region was wholly inaccessible after May 7, 1913, and during the summer months of said year, except by means of poling boats on the larger rivers, and thence across country, where no regular lines of travel or communication were established; that the said district is so situated that communication with its various parts is impossible except at irregular [12] intervals of weeks and months; that the recorder appointed for said district did not arrive therein, and no recording of-

fice was established therein, until on or about July 25, 1913; that no public notice was given as to where such recording office would be established or when the same would be opened, and neither this defendant nor his said attorney in fact had any knowledge thereof until on July 27th, 1913.

M. D. L.

III.

A. L. That said G. L. Gates was duly authorized to locate mining claims for this defendant and to do all acts necessary or deemed advisable to perfect the location and record of mining claims in the Territory of Alaska, which authority was contained in a power of attorney duly executed in writing and acknowledged by this defendant on May 31, 1913; that at all times herein stated this defendant resided outside the Territory of Alaska; that said power of attorney was delivered to the said Gates, who took the same with him upon a prospecting trip into the region included in the White River Precinct and Recording District of Alaska, with the intention in good faith of promptly recording the same there upon his arrival, but was prevented from doing so by the delay in the arrival of the recorder, and the consequent delay in establishing a recording office in said district; that it was impossible to record said power of attorney in any other recording office in the Third Recording Division of Alaska without making a trip involving great expense and the loss of at least two months' time during the most valuable season for prospecting, and the said Gates was dissuaded from attempting to record such power of attorney elsewhere by reason of the fact that such

recording district had been duly created, and a recorder duly appointed, and the said Gates had reason to believe and did believe that such recording office would be promptly established at some convenient place within said district; that said power of attorney was duly recorded by the said Gates at the earliest possible date, to wit, [13] on July 29, 1913, at page 280, in volume 1 of the Records of said White River Precinct and Recording District of Alaska.

#### IV.

That said Gates perfected the location of said placer mining claim designated as No. 2 Below Discovery on Eldorado Creek, and duly executed on behalf of this defendant and filed for record, a notice of location thereof in due form, and the same was duly recorded on July 27th, 1913, at page 31, in volume 1 of the mining records of the said White River Precinct and Recording District of Alaska.

#### V.

That on or about August 30th, 1913, the plaintiff, forcibly and unlawfully, and by threats of force and violence, entered upon a portion of the ground included in said Placer Location No. 2 Below Discovery on El Dorado Creek, then and now possessed and occupied by the defendant, and attempted to post thereon, and made a pretended posting thereon of an alleged notice of a placer location; that all the acts done by the plaintiff and in his behalf in connection with the pretended location of such alleged placer claim were done while trespassing upon the rights and property of the defendant, and over the protest of the defendant, and were accomplished by threats



of force and violence by the plaintiff and his agents and employees.

## VI.

That the said plaintiff made no discovery of mineral anywhere upon the ground included within the limits of his pretended location of said placer claim; that the said plaintiff did not post notice of such location in the manner required by law; that the said plaintiff did not mark the boundaries of such pretended location, or establish corners thereof, or otherwise indicate the limits of the same so that any such boundaries could be readily traced, and the pretended location by plaintiff of the placer mining claim described in his complaint was and is wholly void. [14]

WHEREFORE, The defendant, having fully answered, prays that plaintiff take nothing by his complaint, but that the defendant be decreed to be the owner and entitled to the possession of the placer mining claim designated as No. 2 Below Discovery on Eldorado Creek as herein described, and that defendant have judgment against plaintiff for costs.

MAURICE D. LEEHEY,

J. J. FINNEGAN,

Attorneys for Defendant.

United States of America,

Territory of Alaska,—ss.

Maurice D. Leehey, being duly sworn, says: That he is the attorney for the defendant F. W. Purdy in this action; that he has read the foregoing Amended Answer and knows the contents thereof; that the said defendant is at present absent from the Terri-

tory of Alaska, and for that reason this verification is made by affiant as his attorney; that affiant believes all the allegations in the foregoing answer to be true.

MAURICE D. LEEHEY.

Subscribed and sworn to before me this 14th day of March, A. D. 1914.

[Notarial Seal]

J. J. FINNEGAN,  
Notary Public.

My commission expires August 18, 1917.

A true copy.

MAURICE D. LEEHEY.

Service accepted March 16th, 1914.

T. H. FOSTER,  
Attorney for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska. Mar. 16, 1914. Arthur Lang, Clerk. By K. L. Monahan, Deputy. [15]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Motion [to Make Fourth Paragraph of Affirmative Answer in Amended Answer More Definite and Certain].**

COMES NOW the above-named plaintiff and

moves this Honorable Court for an Order requiring the defendant to make the fourth paragraph of his Affirmative Answer in his Amended Answer more definite and certain in this: That he set forth the exact date when the Notice of Location therein mentioned was recorded or filed for record. This Motion is particularly directed to the last three lines of said paragraph which read as follows: "was duly recorded on or about July 29th, 1913, at page 31 in volume 1 of the mining records of the said White River Precinct and Recording District of Alaska."

This Motion is based on the records of the White River Precinct and Recording District of Alaska, and particularly on the records on page 31 of volume 1 thereof, which shows the date of recording said Location Notice as follows: "Recorded by request of W. E. McKinney at 7 P. M. July 27, '13."

Dated this 16th day of March, 1914.

T. J. DONOHOE and  
O. A. TUCKER,  
Attorneys for Plaintiff.

Service of the foregoing Motion is hereby accepted.

MAURICE D. LEEHEY,  
Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Mar. 16, 1914. Arthur Lang, Clerk. [16].

*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Order [Granting Motion to Make Fourth Paragraph  
of Affirmative Answer in Amended Answer More  
Definite and Certain.]**

This matter coming on regularly to be heard on the motion of plaintiff for an Order of this Court requiring the defendant to make the fourth paragraph of his Affirmative Answer in his Amended Answer more definite and certain, in this: That the defendant be required to set out in said paragraph the day of the month and year on which he filed for record the Notice of Location of the mining claim therein mentioned. And the Court being fully advised in the premises,

IT IS ORDERED that said motion be granted and said defendant is ordered to amend said paragraph by interlineation by setting out the exact day on which said notice of location was filed for record with the recorder of the White River Recording Precinct of the Territory of Alaska.

FRED M. BROWN,

Judge.

Done in open court this 17th day of March, 1914.

To the foregoing ruling of the Court the defendant excepted and exception was allowed.

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Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Mar. 17, 1914. Arthur Lang, Clerk.

Entered Court Journal No. C-2, Page No. 168.  
[17]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Demurrer [to Amended Answer].**

COMES NOW the above-named plaintiff and demurs to defendant's Amended Answer as follows:

I.

Demurs to paragraphs I, II, III and IV of defendant's further answer and affirmative defense contained in the said Amended Answer, on the ground that said paragraphs do not state facts sufficient to constitute or make a cause of defense against plaintiff's Amended Complaint.

T. J. DONOHUE,

O. A. TUCKER,

Attorneys for Plaintiff.

Service of the foregoing Demurrer is hereby accepted this 18th day of March, 1914.

M. D. LEEHEY,

J. J. FINNEGAN,

Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Mar. 18, 1914. Arthur Lang, Clerk. By K. L. Monahan, Deputy.  
[18]

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Special March 1914 Term—March 18th—14th Court Day, Wednesday.

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Minute Order Overruling Demurrer.**

Now, on this day, this matter came on to be heard upon plaintiff's demurrer to defendant's amended answer; T. J. Donohoe and O. A. Tucker appearing as attorneys for Dan D. Sutherland, plaintiff, and offering said demurrer, Maurice D. Leehey appearing as attorney for the defendant and after arguments had and the Court being fully advised in the premises.

IT IS ORDERED that said demurrer be and the same is hereby overruled, to which order and ruling of the Court plaintiff excepts and exception is allowed, and



IT IS FURTHER ORDERED that plaintiff have until March 31, 1914, in which to reply to defendant's amended answer.

Entered Court Journal No. C-2, Page 170. [19]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Reply.**

COMES NOW the above-named plaintiff and for Reply to defendant's further answer and affirmative defense admits, denies and alleges as follows:

I.

Referring to the first paragraph of said further answer and affirmative defense contained in defendant's amended answer, the plaintiff denies each and every allegation therein contained.

II.

Referring to the second paragraph of said further answer and affirmative defense contained in defendant's Amended Answer, the plaintiff admits the establishment of the White River Precinct and Recording District as therein alleged; and admits the appointment of a Recorder for said district, and denies each and every other allegation therein contained.

## III.

Referring to the third paragraph of said further Answer and affirmative defense contained in defendant's Amended Answer, the plaintiff denies each and every allegation therein contained.

## IV.

Referring to the fourth paragraph of said further Answer and affirmative defense contained in defendant's Amended Answer, the plaintiff denies each and every allegation therein contained.

## V.

Referring to the fifth and sixth paragraphs of said further answer and affirmative defense contained in defendant's Amended Answer, the plaintiff denies each and every allegation therein contained. [20]

WHEREFORE Plaintiff prays judgment in accordance with the prayer of his Amended Complaint.

T. J. DONOHUE and  
E. E. RITCHIE,  
Attorneys for Plaintiff.

United States of America,  
Territory of Alaska,—ss.

Dan D. Sutherland, being first duly sworn, deposes and says: That he is the plaintiff named in the foregoing Reply; that he has read said Reply and knows the contents thereof and the same is true as he verily believes.

DAN D. SUTHERLAND.



Subscribed and sworn to before me this 20th day of March, 1914.

[Notarial Seal]

GEO. J. LOVE,

Notary Public for Alaska.

My commission expires Nov. 25, 1914.

Service of the above and foregoing Reply is this day accepted by receiving a copy thereof.

MAURICE D. LEEHEY,

Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Mar. 28, 1914. Arthur Lang, Clerk. [21]

---

[Transcript of Testimony.]

*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

FRANK W. PURDY,

Defendant.

TRANSCRIPT OF RECORD.

BE IT REMEMBERED, That the above-entitled cause came on duly and regularly to be heard at Cordova, Alaska, on Tuesday, March 31, 1914, at 10 o'clock A. M., before the Honorable FRED. M. BROWN, Judge of said court, and a jury:

The plaintiff herein being represented by his attorneys and counsel T. J. Donohoe, Esq.; E. E. Ritchie, Esq., and O. A. Tucker, Esq.:

The defendant herein being represented by his attorneys and counsel Maurice D. Leehey, Esq., and J. J. Finnegan, Esq.:

Opening statements were made to the Court and jury on behalf of the plaintiff by Mr. Donohoe and on behalf of the defendant by Mr. Leehey:

WHEREUPON the following additional proceedings were had and done: [22]

No. C-73.

## SUTHERLAND

v.

## PURDY.

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[Testimony of John J. Ford, for Plaintiff.]

JOHN J. FORD, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. DONOHOE.

Q. What is your name? A. John J. Ford.

Q. How old are you? A. 37.

Q. Where do you reside?

A. I have resided in Valdez; my home is in the Shushana now.

Q. How long have you resided in Alaska?

(Testimony of John J. Ford.)

A. Between ten and twelve years.

Q. What has been your main occupation since you arrived in Alaska?

A. Mining and prospecting; I worked five seasons in the mail service; outside of that it has been mining and prospecting.

Q. Where did you first do mining and prospecting in Alaska?

A. On Lemon Creek, the Forty Mile country.

Q. You speak of the Forty Mile country—so the jury will not be confused I will ask you, do you know of a place called Forty Mile, Yukon Territory?

A. Yes, I do.

Q. This Forty Mile country you speak of is not in that section, is it?     A. No, it is not.

Q. It is within Alaska?

A. It is within Alaska.

Q. How far is it from Yukon City on the Yukon River?     A. I am not positive how far it is.

Q. Is that the section of country where Jack Wade Creek is and Steele Creek?     [25\*—2†]

A. Yes, it is further this way, about thirty-five miles.

Q. How long did you follow mining in that section?     A. About nine months.

Q. When did you first come into the Valdez or Cordova section of Alaska?     A. About 1904.

Q. Have you done any prospecting in and about Valdez?     A. I have.

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\*Page-number appearing at foot of page of certified Transcript of Record.

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(Testimony of John J. Ford.)

Q. For how many seasons?

A. About two seasons I put in in Valdez proper, that district, and the Shushana country and Copper River country different seasons there.

Q. Did you make any locations of quartz and placer in that section?     A. I did.

Q. And started their development?

A. Yes, sir, I did.

Q. Where were you working in June and the early part of July, 1913?

A. I was working at Teikhell.

Q. For whom and what were you doing?

A. The Alaska Road Commission.

Q. Was it from that point that you started to go into the Shushana District last summer?

A. It was.

Q. Who accompanied you?

A. My partner, Dan Sutherland, and Robert T. Smith.

Q. The plaintiff in this action?     A. Yes.

Q. By what route did you go in?     [26—3]

A. We went to Chitina; took the train to McCarthys and went in from McCarthys with horses.

Q. How many horses did you have?     A. Two.

Q. Who was the other party with you?

A. Robert T. Smith.

Q. There were three of you in the party?

A. There was.

Q. And you went up the Chitistone and crossed the glacier to Solo Creek?

(Testimony of John J. Ford.)

A. About Solo Creek—we crossed the Russell Glacier.

Q. You didn't take the Nazina Glacier?

A. No.

Q. Now, when did you, Sutherland and Smith arrive in the Shushana region?

A. Somewhere between the 16th and 18th of August—I think it was the 17th.

Q. Were you ever upon what is known as Big Eldorado Creek?     A. Yes, sir.

Q. Are you familiar with that creek and the locations on it?

A. I am, with the upper part of the creek.

Q. And up above the canyon?     A. Yes, sir.

Q. What is the name of the claim on Big Eldorado at the upper end of the canyon, that is located at the upper end of the canyon?

A. The way the canyon starts there No. 4 would be about the first claim going up the canyon.

Q. No. 4 Below Discovery?

A. Yes, sir. [27—4]

Q. You are familiar with No. 3 Below Discovery?

A. I am.

Q. You are familiar with the ground in controversy here known as the Surprise Fraction?

A. Yes, sir.

Q. And you are familiar with the claim above it?

A. Yes, sir.

Q. What name has the claim above this Surprise Fraction?

A. Why, it is located for Mr. Purdy by G. L. Gates,



(Testimony of John J. Ford.)

attorney-in-fact—it is No. 2 Below Discovery.

Q. That claim has been relocated by someone else?    A. Yes.    A. F. Nelson.

Q. What does he call the claim?

A. No. 2 Below Discovery.

Q. You are familiar with the upper end of the creek, where Bear Pup comes in and Granite Creek comes in?    A. I am.

Q. Have you at my request prepared a diagram or drawing representing the Big Eldorado Creek, the location of the Surprise Fraction and the location of the claims above and below this Surprise Fraction? Have you prepared such a diagram?

A. Yes, sir, I have.

Q. That diagram as I understand it is not drawn from a survey or on a scale?    A. No, sir.

Q. Does it correctly show the situation so far as the Surprise Fraction is concerned?

A. Yes, it does. [28—5]

Q. Examine that and see if that is the diagram you have testified to. (Handing witness paper.)

A. That is the map I drew.

Mr. DONOHOE.—We offer the map in evidence for the purpose of illustration.

Mr. LEEHEY.—Understanding the offer to be purely for the purpose of illustration and no claim that it is an accurate map, based on surveys, the defendant has no objection. The drawing is admitted in evidence and marked Plaintiff's Exhibit "A."

Q. You have two diagrams on this plat, will you explain to the jury what each of them means.

(Testimony of John J. Ford.)

A. The small one, the upper one, is Big Eldorado Creek, with Bear Pup and Granite Creek coming in and the lower one is simply the three claims on the creek drawn on a larger scale.

Q. What do the lines marked in red designate?

A. They designate the Surprise Fraction.

Q. And what is marked on the map No. 2 Below—what claim is that?

A. That is Mr. Purdy's claim.

Q. Has anybody else got a notice in that vicinity?

A. A. F. Nelson.

Q. Now, what is the claim immediately above the Surprise Fraction called on that drawing?

A. Two Below.

Q. What is the claim immediately below the Surprise Fraction called on that drawing?

A. Three Below.

Q. What are the writings designating monuments at the upper [29—6] end of the Surprise Fraction as shown on that diagram?

A. These writings?

Q. Yes, on the upper end—read what they are.

A. This in the blue pencil here, point where Purdy notice was posted, his initial monument.

Q. What is the other writing?

A. Sutherland's discovery and upper centre end.

Q. Now, going to the lower end of the Surprise Fraction, what is the writing there?

A. Sutherland's lower centre end.

Q. What is the other writing?

A. McKinney's initial monument, in blue pencil;



(Testimony of John J. Ford.)

Mr. McKinney located for Mr. Schultz.

Q. What is this stream?      A. Wilson Creek.

Q. Is this practically north?

A. It is, yes, to the best of my knowledge.

Q. And this is practically south?      A. It is.

Q. Now, on which limit of the running water in Big Eldorado Creek was the monument on which Purdy's notice was posted, on which limit of the creek?

A. The left limit, that is my memory.

Q. Just explain to the jury what you mean by right limit and left limit. And what miners mean by those terms.

A. Water running down stream on the right hand side of the creek is the right limit and left hand side facing down stream is the left limit.

Q. Now, in order to find what limit it is, you face down the stream and the right limit is on the right hand side and the left limit on the left hand side?

[30—7]      A. Yes.

Q. Did you go upon the ground, what is now known as the Surprise Fraction, on August 30, 1913?

A. I did.

Q. Who accompanied you there?

A. Dan Sutherland, my partner.

Q. What did you do upon reaching the ground now covered by the Surprise Fraction?

A. I read Mr. Purdy's location notice.

Q. Just point out to the jury on that diagram the point where you found Purdy's location notice.

A. This monument right here (indicating); it is

(Testimony of John J. Ford.)

marked with a blue pencil.

Q. That is at the upper end of what is now called the Surprise Fraction?     A. Yes.

Q. What did that notice contain as to the direction of the claim located by Mr. Purdy, how it lay from the place where the notice was?

A. He claimed 1320 ft. up stream.

Q. Now, if the claim was located as described in that notice point out to the jury where it would lie with reference to that plat.

A. It would lie here (indicating).

Q. And that is marked on that map by what designation?     A. Two Below.

Q. Now, you made a copy of that notice of Purdy's?     A. I did.

Q. Have you that copy with you?

A. Yes, sir. [31—8]

Q. Do you know if that copy is a true and correct copy of the notice posted on the ground?

A. Yes, I do.

Q. Will you produce that memorandum?

A. Yes, sir. (Witness does so.)

Q. That memorandum is made in your own handwriting?     A. It is.

Mr. DONOHOE.—We desire to have the witness read the memorandum into the record, unless there is some objection to it.

Mr. LEEHEY.—We object to it as incompetent, irrelevant and immaterial and a self-serving declaration. The witness claims to have gone on this property nearly two months after its location, not in the

(Testimony of John J. Ford.)

presence of the defendant or anyone in his behalf,—after two months time had elapsed and when the notice might have been and probably would have been much obliterated and could have been changed by hundreds of persons; to undertake to prove the contents of the notice as of the date it was posted by such testimony is clearly incompetent.

By the COURT.—Have you made any request for the original to know whether you can get it or not?

Mr. DONOHOE.—We never took it away; it would be a violation of the law to do so. I will question the witness further.

Q. When did you last see that notice posted on the ground, about when?

A. Some time in September.

Q. Was it within your power or your partner, Sutherland's power, to produce that notice in court?

A. No, sir.

By the COURT.—You may demand of the defendant if they have that [32—9] notice or can produce it, to do so.

Mr. DONOHOE.—The plaintiff at this time demands of the defendant that he produce his original notice as posted on the ground and in the absence of so producing it, we will ask the Court to permit us to prove the copy.

Mr. LEEHEY.—We will be very glad to produce the notice; it will probably take two or three weeks to do so. We haven't it here. This is the first intimation we have had that there would be the slightest thing claimed to be wrong about that no-

(Testimony of John J. Ford.)

tice. We are perfectly willing to produce it and will produce it, but we object to any secondary evidence as to its contents without any opportunity on our part to produce it.

Objection overruled. Defendant allowed an exception.

Q. Read that notice into the record as you made it.

A. There was a letter or two missing but I made an exact copy of what was on it. I have i-c-e and p-l-a-c-e, that was notice of placer location as I took it, the location commencing—locating a claim of twenty acres for placer mining purposes, situated on Eldorado Creek, a tributary of Wilson Creek, Chisana Mining District, Alaska, more particularly described, to wit: Commencing at this initial post and running up stream 1320 ft. to centre end post and 330 ft. on each side of initial post and upper centre end post; discovered and located July 3rd, 193; locator F. W. Purdy, G. W. Gates, Attorney.

Q. What kind of a monument was that notice in?

A. That notice was in a rock monument.

Q. In a rock monument?

A. Yes, sir. [33—10]

Q. A large monument? Describe the size of it.

A. A monument about two feet and a half high and about the same at the base,—I should say two feet and a half, something like that.

Q. That was the first time that you read that notice, August 30th? A. Yes, sir.

Q. Now, you say that Sutherland was with you at

(Testimony of John J. Ford.)

that time?     A. He was.

Q. What next did you do in reference to the location of the Surprise Fraction?

A. I next read Mr. A. F. Nelson's notice in a monument that was near.

Q. How far was that notice from Purdy's?

A. About three feet.

Q. And how did Mr. A. F. Nelson's notice describe this claim?

Mr. LEEHEY.—We object to that as incompetent, irrelevant and immaterial.

Mr. DONOHUE.—I will withdraw the question.

Q. Was there any other notice there?

A. None but those two.

Mr. DONOHUE.—I believe that question I put before is competent. We plead when we went upon the ground that it was unappropriated and unoccupied public domain and I think in order to establish that allegation, it is necessary to prove the Nelson notice. We renew that question—I will put it again.

Q. What direction did Mr. Nelson's notice indicate the way this claim lay from the monument containing the posted notice?

Mr. LEEHEY.—We object as incompetent, irrelevant and immaterial and not the best evidence, and self-serving. [34—11]

The objection was by the Court sustained. To which ruling plaintiff is allowed an exception.

Q. When you arrived at the upper end of what is now the Surprise Fraction, was there any notice posted at that point claiming the ground down the stream?     A. No, sir, there was not.



(Testimony of John J. Ford.)

Q. What did you next do toward locating the Surprise Fraction, after you had read the notice?

A. We went down the creek—

Q. Which side of the creek?

A. I went down the right limit, my partner went down the left, looking for stakes and we met down at the monuments at No. Three Below.

Q. Did you encounter any stakes along on your way down?     A. No, sir.

Q. What did you find when you arrived at the lower end? Point out to the jury on that diagram where that lower end is.

A. We went from here down to here (indicating).

Q. From the upper end to the lower end of what is shown as the Surprise Fraction?     A. Yes, sir.

Q. What did you find at the lower end of the claim as to monuments?

A. We found a monument of three rocks there, about a foot and a half high.

Q. Was there any notice in it?

A. There was.

Q. Whose notice was it?

A. It was Mr. Schultz's, by W. E. McKinney, attorney. [35—12]

Q. How did it describe the claim?

Mr. LEEHEY.—We object as incompetent, irrelevant and immaterial and not the best evidence.

Mr. RITCHIE.—We insist it is a circumstance to show the general situation.

Mr. DONOHUE.—It is the adjoining claim below, but I think we are entitled to take up every notice or



(Testimony of John J. Ford.)

any recording anywhere near that property to establish the fact that it was unoccupied and unappropriated public domain when we went on it. They have denied that allegation and it is in issue and I know of no other way to show that it was unoccupied and unappropriated public domain than to show that all the notices described some other ground than this ground in controversy.

By the COURT.—I am not at this time satisfied on that question but I will sustain the objection at this time and hear you later on it; I take it that any markings on any of the claims adjoining, of other parties, cannot affect the rights of either party to this case.

Mr. DONOHOE.—I do not contend it is absolutely essential but I will ask an exception to the ruling. Exception allowed.

By the COURT.—I will consider the matter and you can present it at some other time.

Mr. DONOHOE.—To preserve that, I wish to put another question.

Q. What other notice did you find there, or monument?

Mr. LEEHEY.—We object to the notice. We admit the testimony as to monuments would be competent, if the monument is properly identified.

By the COURT.—Anybody else's notice on adjoining claims could not be binding or affect the rights of these parties. I [36—13] will sustain the objection as to any notice, unless it be confined to the limits of this claim.

(Testimony of John J. Ford.)

To which ruling plaintiff is allowed an exception.

Q. Did you find any other monument there?

A. I found a post.

Q. At the lower centre end, did you find any other monument excepting the McKinney monument?

A. No monument; there was a post there.

Q. Was there a post?      A. Yes.

Q. Whose post was it?      A. Richard Bell's.

Q. Did you read the writing on it?      A. I did.

Q. Did it cover any of the ground embraced in the Surprise Fraction?      A. No, sir.

Q. The claim as described in the writing did not cover any of the land in the Surprise Fraction?

A. No.

Q. Now, did the writing in the first monument you have testified to cover any of the ground now embraced in the Surprise Fraction?

A. It did not.

Q. What next did you do after arriving at the lower end?      A. After reading this notice?

Q. After reading this notice—what did you do further in relation to the locating of the Surprise Fraction?

A. We paced back up the creek to Mr. Purdy's monument.

Q. Purdy's monument at the upper end? [37—  
14]

A. Yes, paced the distance.

Q. And what distance was it?

A. About 1300 feet.

Q. What next did you do that day in regard to

(Testimony of John J. Ford.)

discovery or anything in connection with the location of that claim?

Mr. LEEHEY.—We object to that as leading.

Objection overruled—defendant excepts.

A. We did some panning there; we took our tools and did some panning.

Q. What results did you get from the panning, if any?

A. We got colors in every pan, got lots of black sand—some coarse colors.

Q. You have had experience in placer mining?

A. I have.

Q. And do the results that you obtained from that panning justify further exploration of that ground for mining purposes?

A. They certainly did.

Q. What next did you do?

A. I went down and put in a lower centre end monument.

Q. Describe that monument—point out on the plat where you put in the lower centre end monument?

A. This is the monument here (indicating). I built a monument of rocks, about three feet high—a little higher—and four feet at the base.

Q. Did you put any writing in that monument?

A. I did.

Q. Just state writing you put in there—how did you put it in? By paper?

A. I had a piece of paper—I had some in my pocket-book and [38—15] tore a piece out.

Q. What writings did you make?

(Testimony of John J. Ford.)

A. I put on that, the Surprise Fraction, lower centre end, located August 30th, Dan Sutherland, running 1300 feet up stream.

Q. And where did you place that paper?

A. On top of the monument and laid a flat rock, laid another one over it, and let the paper stick out so any one coming along could see there was a notice there.

Q. What next did you do that day toward perfecting that location?

A. I went over the corners then.

Q. The lower corners you say?      A. Yes.

Q. Which lower corner did you go to first?

A. The lower corner on the right limit first.

Q. Point out to the jury on the diagram where that is.

A. That would be this corner right here (indicating).

Q. What is that marked now as the corner of the Surprise Fraction?      A. Corner No. 2.

Q. State to the jury what you found at that corner in the way of markings.

A. I found three posts there, three stakes.

Q. Describe them.

A. There was a willow stake, about two feet high—

Q. Any writings on it?

A. There was none—and there was a spruce about three feet high.

Q. Any writings on it? [39—16]      A. Yes, sir.

Q. What writing?

A. Marked Richard Bell, arrow pointing down

(Testimony of John J. Ford.)

stream, 1320 feet on it.

Mr. LEEHEY.—Is that on the right limit?

Mr. DONOHOE.—Yes, lower corner of the right limit.

Q. What was on the other stake, if anything?

A. A corner stake, bench claim—something about a bench claim.

Q. Is that all that was on it?

A. That is all—Corner Number 2 or something, of bench claim.

Q. Was there any stake at the right limit, at the lower corner of the right limit, of what is now the Surprise Fraction, indicating the ground above was located, or the ground now embraced in the Surprise Fraction was located?

A. No, sir, there was not a sign.

Q. What next did you do that evening?

A. I came up over here (indicating) and crossed back up and went up to Number 3 corner.

Q. That is the lower left limit stake?

A. That is the lower left limit corner, yes.

Q. And marked Surprise Fraction Corner Number 3? A. Yes, sir.

Q. What did you find there in the way of stakes or anything?

A. I found Richard Bell's stake there, his corner stake.

Q. What was on it?

A. Richard Bell and there was an arrow pointing down stream 1320 feet.

Q. What other stake did you find there?



(Testimony of John J. Ford.)

A. I found a willow stake there.

Q. How large was that? [40—17]

A. I found a willow stake there about two feet, not more than two and a half feet, high.

Q. How thick?

A. An inch or an inch and a half.

Q. Any writings on it?      A. None.

Q. Did you find any other stake there?

A. Not at that corner, no, sir.

Q. Now then what next did you do? Was there any monument or stake or marking of any kind upon the ground at that point that would lead you to believe that the ground now covered by the Surprise Fraction was previously located?

A. No, sir, there was not.

Q. What else did you do there?

A. I crossed down to the creek and went up to where Sutherland was making his location.

Q. Point out on the map where that is.

A. Right here (indicating).

Q. The upper centre end of the Surprise Fraction?      A. Yes.

Q. What had Sutherland done during your absence towards locating that claim?

A. Why, he was erecting a monument—I didn't stop there but a minute then.

Q. You went back there later in the day?

A. Yes, sir.

Q. Where did you go then?

A. I went up to the left limit corner of Number 2 below.



(Testimony of John J. Ford.)

Q. And it is the upper left limit corner of the Surprise Fraction now? [41—18]

A. Yes, Number 4 Corner.

Q. Corner Number 4 Surprise Fraction?

A. Yes, sir.

Q. What did you find at that corner in the way of stakes? A. I found two stakes there.

Q. Describe them.

A. One was a spruce stake.

Q. Any writing on it? A. There was.

Q. What was on it?

A. George H. Shade was written then, by A. F. Nelson, attorney and an arrow pointing up stream, 1320 feet and I think the date—I am not sure.

Q. What was on the other stake? A. Nothing.

Q. No writing at all? A. No.

Q. Was there any stake or monument at that point that would lead you to believe that the land now covered by the Surprise Fraction was previously stakes or located? A. There was none.

Q. Where did you go from that point?

A. I crossed over then and went up to the Number One corner of the Surprise Fraction.

Q. That is the upper right-hand limit?

A. Yes, sir.

Q. What did you find there in the way of stakes?

A. Found three stakes there.

Q. Describe them.

A. There was a spruce stake there—

Q. Any writing on it? [42—19] A. Yes, sir.

Q. What was it?

(Testimony of John J. Ford.)

A. George H. Shade by A. F. Nelson, an arrow pointing up stream, 1320 feet.

Q. What else did you find there? Is that the same Nelson who had the monument that you have testified to previously close to the Purdy monument?

A. Yes, sir.

Q. Now, then, what other stake did you examine there?

A. There was a willow stake there; it said corner stake of bench claim or something like that.

Q. How far was that from the Nelson stake?

A. Probably two feet?

Q. What other stake was there?

A. There was a willow stake there, about two feet high, something like that—two and a half.

Q. Any markings on it? A. There was none.

Q. Did you find any stakes or monuments at that corner that would lead you to believe that the ground now covered by the Surprise Fraction was staked?

A. No, sir, I did not.

Q. Where did you go after you examined that corner Number One?

A. I went back to where Dan Sutherland was, his initial monument.

Q. What had Sutherland done in your absence towards locating the Surprise Fraction?

A. He had erected a monument there.

Q. How high was that monument—describe it?

A. The monument was three feet high, a little better; four [43—20] feet at the base and it stuck in the form of a pyramid in the rocks.

(Testimony of John J. Ford.)

Q. Did you witness any paper for him there?

A. Yes, sir, I did.

Q. What?      A. His notice of location.

Q. You examined the location notice he had written, did you?      A. Yes, I read it.

Q. Where was that location notice deposited after it had been signed?

A. That was put in the initial monument, in this monument marked with a lead pencil here, and a flat rock laid down and another one over it and the notice was sticking out.

Q. Was that notice written on a printed location blank partly?      A. Yes, it was on a printed form.

Q. Was that about all that was done that day towards this location work?

A. That was all.

Q. And where did you go after posting the notice of location, you and Sutherland?

A. We went home to our camp then.

Q. Where was your camp?

A. Up the mouth of Bonanza Creek, on Johnson Creek.

Q. How far away from this land?

A. Between two and a half and three miles.

Q. When did you return to this ground?

A. The following day.

Q. August 31st?      A. Yes.

Q. What did you do that day toward perfecting the location of [44—21] Sutherland, Sutherland's location, of the ground?

A. Put in the corner stakes.

(Testimony of John J. Ford.)

Q. What corner stakes did you put up first?

A. I put up the Number One corner stake on the right limit.

Q. How did you ascertain the location of that Number One corner, where it should be located?

A. I started at Sutherland's initial monument and paced it to where these other corner stakes were.

Q. What distance did you find that to be?

A. Why that was short of 330 feet, about 15 feet short.

Q. You made it about 315 feet?      A. Yes.

Q. And you erected a corner monument there, or post?      A. I did.

Q. Just describe to the jury what you did there when erecting that corner post.

A. I put in a willow stake there about four feet high, somewhere about two inches or two and a half through, and took a shovel and cut the tundra through; there was no rocks, and I piled it up, probably a foot and a half high so everybody could see it.

Q. Around the stake?

A. Yes—and I wrote on it.

Q. Describe what you wrote on the corner?

A. Corner stake Number One Surprise Fraction, Dan Sutherland, locator, and I think I put the date.

Q. How is that again?

A. Corner Stake Number One of Surprise Fraction, Dan Sutherland, locator and I think I put the date, August 30th if I remember right. [45—22]

Q. Did you put any distance or arrows or anything of that sort?

(Testimony of John J. Ford.)

A. I did—I put an arrow on the inside of the stake, pointing down the stream and marked 1300 feet to Corner Number 2, as I remember it.

Q. What else?

A. And I put an arrow pointing to the initial monument and wrote 330 feet to the centre end.

Q. Where did you go from that point during that day?

A. I went down to this lower right limit corner, then walked along down through here (indicating on plat.)

Q. What corner is that as marked on the map?

A. Corner Number 2 of the Surprise.

Q. What did you do at that point towards fixing the corners of the Surprise Fraction?

A. I went down there and had to go down to the creek to get the distances and I went down to our centre end and paced the distances to these corners and found they were short—I found it was a little short there, probably fifteen or twenty feet short of 330 feet.

Q. Did you establish a corner there?      A. I did.

Q. Describe what you did?

A. I put in a stake there, about four feet high, about two or two and a half inches through, in thickness, and I banked sod around it, probably a foot and a half, tundra I cut, and I marked it Surprise Fraction—I am not certain the terms I got first—I think it was Surprise Fraction Corner, stake Number 2; it might have been Corner stake Number 2 of Surprise Fraction; it was one or the other. [46—23]



(Testimony of John J. Ford.)

Q. What else did you write on it, if anything?

A. Dan Sutherland, locator, and I put the two arrows on it.

Q. The same as you did in Number One?

A. Yes.

Q. Describe how you put those arrows:

Q. I put them on the inside of the stake, one running up stream and claiming 1300 feet to Corner Number One.

Q. Where did you put the other arrow?

A. I pointed that to the centre end and claimed 330 feet to the centre end.

Q. Now, why didn't you put those corner stakes at the full 330 feet?

A. Because others had staked there—there was corners of a bench claim there.

Q. And you didn't want to conflict with them?

A. No.

Q. What else did you do that day toward locating that claim?

A. Why, I went down there and went to work as I remember doing location work.

Q. While you were putting up these stakes you have described, where was Sutherland?

A. He was putting up the corners on the left limit.

Q. You didn't visit those corners that day, did you? A. No.

Q. Where did you commence to do work?

A. About 75 feet below Sutherland's initial monument.

Q. Was Sutherland with you there?



(Testimony of John J. Ford.)

A. He joined me, yes.

Q. How long did you work there that day?

A. Worked until about twelve o'clock. [47—24]

Q. How many hours that day?

A. Five hours, I should judge.

Q. You mean five hours for each of you?

A. Yes.

Q. What work did you start? What was the nature of the work you were doing?

A. We were putting a cut in for bedrock in the creek and thought we would try to get bedrock there.

Q. Did you encounter frost? A. I did.

Q. How many feet did you go before you encountered frost? A. I think about two feet.

Q. Is that all the work you did that day in connection with that claim? A. Yes, sir, that is all.

Q. And then returned to your camp at the month of Bonanza? A. Yes, sir.

Q. Did you go back the next day, the first day of September? A. I did.

Q. Who accompanied you that day?

A. Judge Tucker.

Q. Anyone else? A. Dan Sutherland.

Q. Tell the jury how Judge Tucker came to accompany you?

A. Well, I went to Judge Tucker that second night we were down there and told him I would like to have him come up and look the claim over. There was some ground there that had not been staked and we wanted everything safe and right and wanted him to come up as a witness so if anything was moved after-

(Testimony of John J. Ford.)

wards or anything, he would know it. [48—25]

Q. What did you do on that day towards further locating the claim?

A. Put in side lines, side stakes.

Q. Which side lines did you put in?

A. On the right limit, these two here (indicating).

Q. What kind of side lines and what kind of markings did you place on these side lines?

A. Had two willow stakes about four feet high and probably two inches through—it might not have been more than an inch and a half.

Q. What marking did you put on them?

A. Side lines, Surprise Fraction, and put arrows pointing each way, up and down.

Q. Did you do that with both the stakes?

A. I did it on both of them, yes.

Q. What is the topography of that country there where the side lines of the Surprise Fraction lay?

A. Well, there is a kind of glacier moraine bench around there, but it is fairly level so you can look down.

Q. Any timber there?

A. No timber. Willows.

Q. Standing at corner Number One shown on the map, can you see the first side line stake you put in?

A. Yes, sir.

Q. And standing at that side line stake, can you see the second? A. Yes.

Q. And from there, can you see the next corner?

A. Yes.

Q. Did you do anything further that day in re-

(Testimony of John J. Ford.)

gard to locating the claim or did you start further development work? [49—26]

A. I went with Mr. Tucker and took copies of the notices there again.

Q. You had Judge Tucker make a copy of the notice at the upper end of the Surprise Fraction?

A. Yes, and all the notices around there.

Q. Did Judge Tucker make a copy of the notice by Mr. Purdy at the upper end? A. He did.

Q. And took copies of any other notices there?

A. He made a copy of Sutherland's notice; he made a copy of Schultz's notice by McKinney, attorney.

Q. Where was that Schultz notice?

A. That was at the foot of the Surprise Fraction.

Q. Point that out to the jury.

A. Right here in blue pencil, Number Three Below. A. Yes.

Q. What other notice did he make a copy of?

A. He made a copy of Bell's notice there, Richard Bell's.

Q. Point out the place where Bell's notice was.

A. His stake was really between these two monuments.

Q. Which two monuments?

A. It was our lower centre end.

Q. Did you do anything else toward locating that claim on the first day of September?

A. That is all I recollect; we looked the ground over again to see if there was a sign of anything having been done there or stake or anything.

(Testimony of John J. Ford.)

Q. Did you find anything on that ground now embraced within the lines of the Surprise Fraction that indicated to you [50—27] that there had ever been any work or mining done upon it?

A. There was absolutely nothing there to show.

Q. And did you find any markings or notice that would lead you to believe that that ground was ever located?     A. No, sir.

Q. You didn't do any work on that day, the first day of September?     A. No.

Q. When did you next return to the property?

A. I returned the following day, on the second of September.

Q. Did anybody accompany you that day?

A. No, sir.

Q. What did you do after arriving on the ground?

A. I went down and went to work in the cut.

Q. Did you see any other person there that day, or was it the next day?

A. About an hour after I had been working there, McKinney came along.

Q. And what did he say to you, if anything?

A. He said, "Hulloa Ford," and I said, "Hulloa Dud."

Q. You knew McKinney before?     A. I did.

Q. How long before did you know him?

A. I have known him at Forty Mile, about eight years ago.

Q. What did he say as to whom he represented and as to who had rights there?

A. Well, some talk came up about the Fraction

(Testimony of John J. Ford.)

and I asked him to go up and look at the notice and he read the notice.

Q. Which notice have you reference to?

A. Purdy's notice. [51—28]

Q. You say McKinney went up with you and read that notice? A. Yes, sir, he did.

Q. And what did he say to you at that time?

A. He made some talk about things having been moved. I asked him to go over the claim and show me one stake or one sign that it had ever been located, anywhere, and he said, "Ford, I don't go nothing on stakes" and wouldn't go.

Q. What did he say, if anything, with reference to the Purdy monument?

Mr. LEEHEY.—We object to any statements made by McKinney.

Mr. DONOHOE.—I will qualify him.

Q. Did McKinney say anything to you at that time as to whom he was representing or as to any interest he had in the ground in controversy in this action?

Mr. LEEHEY.—We object to any such statement as that.

By the COURT.—Do you deny that McKinney was acting for or on behalf of the defendant Purdy? I understand from your affidavits that McKinney figures in the matter.

Mr. LEEHEY.—There is not anything in the evidence to qualify McKinney; McKinney did record the location notice, but we have not in any manner, anywhere in the pleadings, said that McKinney was



(Testimony of John J. Ford.)

the agent of the defendant.

Mr. DONOHOE.—I will follow it up by showing McKinney did the so-called assessment work there; he must have been an agent.

Mr. LEEHEY.—That doesn't make his statement binding on the defendant.

Objection overruled; defendant allowed an exception.

A. Not that day,—he said nothing about it.

Q. Have you stated about all the conversation that took place between you and McKinney that day? [52—29]

A. Well, he told me then, "I am going down here and going to work anyhow"; he had a stick on his shoulder.

Q. Was McKinney alone at that time?

A. Yes, sir.

Q. What did you do during that day with reference to the claim, the Surprise Fraction?

A. I told him then we had staked that ground and it was virgin ground and there wasn't a stake in it when we came there and we intended to hold it and he told me he was going down and going to work anyway and I went to work on my own cut.

Q. How far below you did McKinney go?

A. About two or three hundred feet.

Q. How long did you work there that day?

A. I worked until about half-past four or five o'clock that night.

A. How many hours did you put in there?

A. Between eight and nine hours.



(Testimony of John J. Ford.)

Q. Was that all that occurred that day?

A. That was all that occurred to the best of my recollection that day.

Q. Did you return again on the third of September?     A. I did.

Q. Did you meet anyone there at that time?

A. Yes; there had been a light snow and I passed our location monument going to work and I see tracks there and noticed that the board with Purdy's notice on was missing.

Q. What was Purdy's notice written on?

A. Written on a board.

Q. Describe the size of the board to the jury.

[53—30]

A. A board about ten inches long and probably about three inches wide—looked like the bottom of a barrel had been cut for the notice.

Q. When you first saw that notice, where was it?

A. It was at the lower end of Number Two, at the upper end of the Surprise Fraction.

Q. How was it fastened in the monument?

A. There was a rock laid on top of it, laid in the rock monument, and rock piled over it.

Q. Testify what you saw in regard to the Purdy monument.

A. Going down to work, there had been a light snow and I saw tracks there around the monument and looked and saw the notice was missing.

Q. That is the Purdy notice?

A. Yes. And I went down and went to work.

Q. Did you meet McKinney later that day?

(Testimony of John J. Ford.)

A. I did.

Q. State what took place.

A. I was working in the cut and somebody spoke  
(Testimony of John J. Ford.)

and I jumped about two feet—pretty near broke my tools—and looked around and saw a man there.

Q. In your cut?

Mr. LEEHEY.—This is all under the same object—we object to it as incompetent, irrelevant and immaterial.

By the COURT.—Your objection to any conversation with McKinney?

Mr. LEEHEY.—Yes.

Objection overruled—defendant excepts.

Q. State the conversation that took place at that time.

A. McKinney said, “Do you know these two men?” and I said, “I know Mr. Schultz” and he named the other gentleman—I have [54—31] forgotten his name—and he said, “I wish to notify you before these two gentlemen that I am acting for Mr. Gates and that I moved Purdy’s notice,—acting for Purdy and Gates—and moved Purdy’s notice down to the lower end of the claim to its proper monument,” and he said, “Did you get that?” and I said, “I do,” and he says, “I want to notify you to get off this ground and not do any more work here and do you get that?” and I said, “I do”; and I said, “McKinney, I think this is the proper time for me to notify you not to do any more work here, before these witnesses,” and I repeated then

(Testimony of John J. Ford.)

that we had staked the ground, that there was no stakes on it when we staked it, but it was virgin ground and we intended to hold it.

Q. And later, did you see that notice of Purdy's at the lower end of the claim?     A. Yes, sir.

Q. When and where did you next see the location notice of Mr. Purdy that was formerly at the upper end of what is the Surprise Fraction?

A. I saw it at the upper end of Three Below, at the lower end of Surprise Fraction.

Q. Where was it?

A. It was in the Schultz monument there, his initial monument of Three Below.

Q. That is the monument where Mr. Schultz was located by McKinney as attorney in fact?

A. That was the monument.

Q. What kind of a monument was that that you saw the Purdy notice in, after McKinney notified you about moving it?

A. It was a monument consisting of three rocks, probably it [55—32] was less than two feet high altogether—less than two feet high. There was three rocks setting on top of each other like that (indicating).

Q. And how was the board fastened in it?

A. It was laid in between the two upper rocks—laid in there.

Q. How was the Schultz notice by McKinney, on paper or on a board?     A. On a board.

Q. What kind of a board?

A. The same kind of a board—the same size as Purdy's.

(Testimony of John J. Ford.)

Q. Did you ever compare the handwriting on those two boards?     A. I have looked at them often.

Q. Will you state whether they were in the same handwriting or not, each location?

Mr. LEEHEY.—We object to that as incompetent, irrelevant and immaterial.

Objection sustained; plaintiff allowed an exception.

Q. Where was this Purdy notice after McKinney moved it down in reference to the notice of Schultz for Number Three Below?

A. They were both in the same monument.

Q. In different places in the monument?

A. No, they were under the same rock—both laid there with the one rock holding them down.

Q. What else occurred that day after McKinney had notified you to get off the ground?

A. There was some more words there then. He told me that the notice had been moved upstream and he wouldn't put it beyond me to have moved it. There was three to one there and I didn't know but what they were going to beat me up and I don't remember all of it. [56—33]

Q. What did you do by way of doing work on the claim that day?

A. I continued working. McKinney told me then that Gates staked this ground and he says, "I have a quarter interest in everything he stakes—there are four of us; if I had staked it, you wouldn't be doing any work here"; and I said, "Dud, I haven't any weapons here and am not looking for trouble, but

(Testimony of John J. Ford.)

I am sure going to do this work, and if you want to prevent me you will have to kill me." I wanted him to understand that we were ready and were going to do the work.

Q. You did more work that day?

A. Yes, I continued in that cut that day.

Q. How many hours work did you do that day?

A. About eight hours.

Q. When did you next return to this ground?

A. I returned the following day.

Q. And what did you do that day?

A. I worked in the cut all day that day.

Q. Did you have any conversation with McKinney that day, or anyone else?

A. It seems to me that McKinney came up that day and asked me my name and Dan's name, and I told him.

Q. Dan Sutherland you mean?      A. Yes, sir.

Q. Did you work in the cut that day?

A. I did, all day.

Q. That was the 5th of September?

A. That was the 4th of September.

Q. Did you return again on the 5th?      A. I did.

[57—34]

Q. What did you do that day?

A. I worked there in the cut.

Q. All day?      A. All day.

Q. When did you next return?

A. I worked all day on the 5th; it was either the third or fourth I left the cut about an hour to show a fellow who had killed a caribou where he could get



(Testimony of John J. Ford.)

same and I returned to the cut.

Q. On the fifth you worked all day? A. Yes.

Q. And what did you do on the 6th?

A. Worked all day on the 6th is my recollection.

Q. And on the 7th?

A. I am not sure whether I worked on the 7th or not.

Q. How many days work did you you do? Did Sutherland help you part of the time on this work?

A. He did.

Q. How many days work were performed on that claim after you located it and previous to the filing of your certificate of location—how many days work for one man? A. Nine days.

Q. What was the going wages in that camp for similar work? A. \$12.50 a day.

Q. Can you describe the dimensions of the work done by you and Sutherland on that claim?

A. Pretty close to it, yes.

Q. Describe it the best you can.

A. We ran a cut in the creek bottom 45 feet long and between two and two and a half feet deep on an average and two and [58—35] a half to three feet wide; the reason why it wasn't deeper it kept holding us up all the time,—we couldn't cross.

Q. What else did you do?

A. We saw there was no chance getting down there and we went over and went to work on the bench and tried to cut the rim. We put in a cut there 18 feet long and somewhere between four and five feet wide and about six feet deep, I think, on the average.



(Testimony of John J. Ford.)

Q. It was six feet deep at the base of the cut when you stopped?     A. Much deeper than that.

Q. It would average six feet?     A. Yes, sir.

Q. Did you strike the rim?

A. No, we did not.

Mr. DONOHOE.—That will be all at this time.

Cross-examination by Mr. LEEHEY.

Q. How long were you in the Shushana region altogether?

A. We arrived there somewhere between the 16th and 18th of August, and I left there on the 18th day of December.

Q. You located several other claims besides this?

A. I and my partners you mean?

Q. Yes. In the first place, you are a partner of Sutherland in the enterprise?     A. Yes, sir.

Q. And are equally interested with him in this claim in controversy in this action, designated as the Surprise Fraction?

A. We had an equal interest in all the claims we staked. [59—36].

Q. It was the intention when the claim was staked that you were to be an equal partner in it?

A. Yes, sir.

Q. And that relation has continued ever since and still continues?     A. Certainly.

Q. Did you stake some other claims under that partnership arrangement?     A. We did.

Q. Did you stake any other claims that are in dispute?     A. None.

Q. Neither you nor Sutherland?

(Testimony of John J. Ford.)

A. Not to my knowledge.

Q. You are positive that none of the other claims you staked were what is called jumped?

A. I relocated—Joe Clark and I relocated Two Above on Big Eldorado.

Q. That was claimed by someone else?

A. Joe told me not; Joe was a Forty Miler and told me to stake it for an interest with him—we never did any work. I guess he knew.

Q. When did you first go on Eldorado Creek, Big Eldorado Creek?

A. It seems to me it was probably the 20th or 23d of August, somewhere in there.

Q. How did you approach the creek, from what place did you start?

A. Went up Bonanza, stopped at James' ground and went shoveling there; talked a while and went up to Clark Whitten's; he is an old friend of mine—and I asked him about the camp [60-37] and Carl said to me, "Go and take this pan and pan a little," and I panned upon his ground a while and some other fellows came that I knew and talked to me and Carl said, "Gold Run is a good part of the country, go in there and find something," and we started over that way and met a man on Chicken and he told me that they had located claims up on Gold Hill and we claimed up there—got up there and had maps of the country.

Q. I am speaking of the time you went to Big Eldorado.

A. We were up Gold Hill and looked over the

(Testimony of John J. Ford.)

country on the Big Eldorado side and went down there—we were looking over the country.

Q. How did you go over, did you go up the creek or across the creek or down the creek or what way?

A. I went up Bonanza and went up as far as Chicken Creek, came over Gold Hill and dropped from Gold Hill on to Big Eldorado.

Q. You went across country? A. Yes.

Q. Where did you strike?

A. Big Eldorado—it might have been Three Above or down on Discovery, I don't know.

Q. You struck it above the claim you located as the Surprise Fraction? A. Yes.

Q. You knew Dud McKinney for several years?

A. I had known him in the Forty Mile country.

Q. And you also knew Gates, by sight at least?

A. I don't think so—I was trying to recall Gates.

Q. You knew Purdy? [61-38]

A. Not to my recollection; I think he was there when I was there.

Q. You made inquiry, of course, concerning the ownership of property on the creeks, did you not?

A. Why, no.

Q. Did you go to the Recorder's office to examine the records?

A. No, I never looked over a record in my life I know *if* except in Valdez this spring.

Q. Didn't you, when you went into the Shushana diggings, go into the Recorder's office to learn the names of the locators on the different creeks? And the locations?

(Testimony of John J. Ford.)

A. No, I naturally asked where James was and where the good ground was.

Q. You didn't make any effort to check up from the records to see how the different creeks had been located and by whom?      A. Why, no.

Q. The fact is you never went to the Recorder's at all and never examined the records?

A. I was down at the Recorder's office two or three times and my camp was just above there.

Q. Did you ever examine the records?      A. No.

Q. When you went up on Eldorado Creek you knew that McKinney and Gates and fellows from Forty Mile and Dawson had staked several claims there?

A. Not when I went on the creek, not to my knowledge.

Q. When you first went on this ground which you located as the Surprise Fraction, didn't you know that it was already claimed by Gates for Purdy?

A. I knew that the better part of that creek was located by them at the time we went on it and staked it, yes, sir. [62-39]

Q. And you knew that Gates claimed to be the attorney-in-fact for Purdy?

A. I didn't know anything about Gates at that time, only what McKinney mentioned and was talking about it that day.

Q. When was it that you were talking to McKinney, was it before you went on Big Eldorado Creek?

A. No, I had been over on Big Eldorado Creek and

(Testimony of John J. Ford.)

made that trip and came back there and I went over and saw Dud.

Q. When was it that you saw Dud McKinney you are speaking about now with reference to the time you located, before or after?     A. It was before.

Q. How long before?

A. I should judge four days, it might have been less or more than that—I think probably three or four days.

Q. You were advised from that or some other source that Gates claimed, either for himself or somebody else, the claim known as Number Two Below on Big Eldorado, were you not?

A. Before we located?

Q. Yes—that he claimed the location?

A. I think that McKinney told me in the conversation that Gates owned Two Below on Big Eldorado, that is my recollection, and he owned One and Three Below.

Q. Did you learn who located One Below on Big Eldorado at the same time or before you made the location of the Surprise Fraction—Did you learn who located and claimed Number One Below on Big Eldorado?     A. Yes, I did.

Q. Who was that?

A. Why, it was McKinney had his notice on the upper end, [63-40] claiming Number One Below, down stream and Purdy had his notice and claimed up stream.

Q. Before you went on the ground, before you made the attempted location of August 30th, you



(Testimony of John J. Ford.)

knew that McKinney claimed Number One himself, did you not?

A. I didn't know—I was mixed on the whole thing. I went to him for a lease; I thought he owned One and Two Below, and asked him for a lease and he said he didn't own Two Below; that was the conversation. It was after the first time we went on Eldorado Creek and before we located the Surprise Fraction.

Q. And you asked McKinney for a lease of Number One and Two Below?

A. That is what I asked him.

Q. For both claims?

A. Yes. At that time, and I guess still is now, the notice on Discovery and on One Below was missing, the location notice and I wasn't exactly straight in my mind as to who owned the ground or how the claims lay and I thought that Discovery—what is Discovery now and what is Two Below now or One Below—I thought that was McKinney's ground and it was One and Two Below; that is what I had in my mind and I wanted a lease on it and I asked him for a lease on One and Two Below and he told me it might be arranged and he would see Schultz; then he told me that he would have to see Gates about Two Below.

Q. Did he tell you afterwards he saw Gates?

A. I don't recollect whether he did or not, I never saw him afterwards until I saw him in the cut.

Q. Didn't he tell you after that and before you made the attempted [64-41] location that he had



(Testimony of John J. Ford.)

seen Gates and it was all right, he had arranged a lay for you on the ground?

A. I don't recollect any such conversation or ever having seen him again.

Q. You say the time you talked with McKinney in which you requested this lease was some four days before you made the attempted location?

A. Yes, sir, I think so.

Q. Did you see McKinney after that again before the time he came on the ground that you have been describing in your testimony?

A. I will tell you—I used to go up by James' ground and there was always a crowd there, but I didn't fool around there any; there was always a crowd there and I might have passed Dud and said Hulloa but I don't think I did; I don't recollect seeing him again. I had it in my mind to tell him when I saw him, because he had been kind enough to offer me the lease, that I had decided not to take it because the ground was in litigation. I know I would have told him that if I had seen him.

Q. It was in litigation?

A. It apparently was in litigation; it had been re-located by Nelson and I had been making enquiries first as to the rights of the thing.

Q. McKinney told you you could have a lease?

A. He had; while he said he would talk with Gates, he practically intimated I could have 50 and 60.

Q. It was a lease of ground claimed by Gates?

A. I don't remember his ever telling me I could

(Testimony of John J. Ford.)

have the lease, he said he would have to see somebody, it seems to me it [65-42] was Gates.

Q. And he afterwards told you you could have the lease?

A. I don't recollect Dud ever telling me that or having seen him.

Q. I understood you to say he told you you could have the lease—which was it?

A. It was that day, I might have a lease of One and Three Below, which he professed to own, he and Schultz; I told him it was One and Two, what afterwards proved to be Discovery and One—that was the best ground on the creek.

Q. You wanted One and Two and he told you you could have One and Three?

A. I wanted Discovery and One—it proved to be Discovery and One, but at that time I thought it was One and Two.

Q. That is what you wanted?      A. Yes.

Q. Did that ground which you wanted include the ground which you afterwards located as the Surprise Fraction?      A. No, it did not.

Q. You didn't have that particular piece of ground in mind when you asked for the lease?

A. No. I would have been glad to get any of that for that matter.

Q. Did you trace out the monuments on these claims there that you spoke of as Number One and Two, on the claims above where you located the Surprise Fraction?

A. Why, I did not see any monuments there, only

(Testimony of John J. Ford.)

this one that was kicked over here.

Q. What I mean by that is this—You know the claims up the creek were located and claimed by people, Discovery and [66-43] Number One and Two? A. Yes.

Q. Did you go around and try to locate their monuments and trace out their ground from them?

A. I tried to get all the information I could as to who owned the ground by looking at the monuments.

Q. Did you try to ascertain the boundaries of the different claims?

A. My first knowledge was the centre end stake of Number One Above and that showed me that this must be discovery—that is the first time I knew it was Discovery.

Q. Did you go around then to find the monuments of Discovery?

A. There was no monuments, only two little willow stakes; they never put up any centre end or nothing—it is a bare country.

Q. They were located a couple of months prior to that time?

A. They were located on July 3d and we located August 30th.

Q. Speaking of Discovery claim on Eldorado—

A. I don't know when that was located.

Q. It was located a couple of months prior?

A. I should say so.

Q. One of the first claims located in the country?

A. It must have been.

Q. The markings on these monuments would

(Testimony of John J. Ford.)

probably be more or less obliterated?

A. If it was on a board or can it is good for two years.

Q. I am speaking of the markings on the corner mounments? A. Yes, a little.

Q. Did you go around to see them?

A. Yes, there was willow stakes up and down there. [67-44]

Q. On what claims? Discovery?

A. I went over Discovery—I never could find anything on Discovery.

Q. Did you examine Number One Below Discovery—did you examine the monuments?

A. I examined the monuments.

Q. The monuments of McKinney? A. Yes.

Q. You traced those out, did you?

A. Here was the creek, running down the stream and there was a bank on each side; it was easy to trace it. If I found a monument here that said down stream, why I would walk down to the next monument and knew it was located.

Q. You knew the Discovery claim on Eldorado was claimed by Mr. Nels Nelson?

A. I didn't until afterwards.

Q. After what time?

A. When I was working on the Surprise Fraction one day—when I was working there.

Q. After you had made the location of the Surprise Fraction? A. Yes, sir.

Q. Before you located the Surprise Fraction did you undertake to trace out the claims above it and

(Testimony of John J. Ford.)

find out who owned them and the boundaries of them?    A. I did, yes, sir.

Q. What did you do to that end?

A. I went to the initial monuments each way, went to two of them up here; the notices were missing but I saw McKinney's notice here on Number One.

Q. Claiming Number One Below? [68-45]

A. Yes, sir.

Q. And you also saw the notice on Discovery?

A. Well, I saw Nelson's notice here, A. F. Nelson.

Q. That is on Number One?

A. He was claiming One up stream, up this way.

Q. You knew that A. F. Nelson was a jumper as it is called in the locality—he had staked ground previously claimed by some one else?

A. I knew he was a second locator in there.

Q. You know that he had attempted to locate disputed ground?    A. I certainly did.

Q. And you knew that the first attempted location at least was made by Mr. Nels Nelson on Discovery and by Mr. W. E. McKinney on One Below?

A. I don't know who located Discovery only Mr. James' men or somebody told me he had located it—that is how I found out it was his claim.

Q. You didn't make any attempt to find out who had located Discovery on Eldorado Creek?

A. I can show you notes I made; One Above and Discovery seemed to be the same claim and I decided that One Below and Discovery was the same claim until I found the centre end stake and then I could check it over readily.



(Testimony of John J. Ford.)

Q. You obtained the position of the Discovery claim?

A. I did, yes.

Q. And then you, of course, knew that Number One Below Discovery must be below that on the creek, did you not?     A. I did.

Q. And then you knew that Number Two Below must be below that, did you not?

A. It should be below it.

Q. Did you take any steps to ascertain whether these three [69-46] claims could exist in there, whether there was ground enough for them as claimed?

A. I knew, I am not attempting to say I did not know anything like that—I know if the creek had been staked properly, knew afterwards, that this would be Number Two.

Q. As a matter of fact, didn't you know if the creek was staked properly it would be Number Two, —didn't you know that before you made your attempted location on August 30th?

A. No, I had not figured it out, about it then.

Q. Do you mean to say that you went ahead and made the location there without figuring out the boundaries above it?

A. This is the only ground that we thought was in question, here (indicating) —we couldn't find any monuments or anything about it.

Q. Did you assume then that the Number Two and Number One and Discovery were all above it?

A. At that time?



(Testimony of John J. Ford.)

Q. Yes, at the time you had made that location, August 30th?

A. No, I think I assumed as I remember, I am sure I did, that McKinney had staked down stream, calling it Number One and Gates had staked up stream, and called it Number Two.

Q. As a matter of fact didn't you know before you made that attempted location on August 30th, that that ground was actually being claimed by a prior locator?

A. No, I did not—I didn't know whether it was or was not being claimed.

Q. You didn't know whether it was or not?

A. No.

Q. Didn't you understand that the entire distance of Eldorado Creek was staked and claimed? [70-47]

A. Certainly, every creek in there. .

Q. And you didn't attempt to go and determine the length of the claim known as Discovery on Eldorado and Number One Below and Number Two Below, did you?

A. I didn't attempt to ascertain the length of them?

Q. Yes—did you attempt to do so, to ascertain where their position might be?

A. Yes, I know the length of them.

Q. Then you must have known from that that Number Two would have to extend right down on this very ground you were locating?

A. If Number Two were staked properly I sup-

(Testimony of John J. Ford.)

pose that would be number Two.

Q. Then as a matter of fact you located because you thought there had been an error made by Gates in his description of the location?

A. There wasn't a location on there; his stake read up stream and there wasn't a stake on there and there wasn't a sign of a shovel.

Q. There were four willow stakes, you say?

A. Unmarked—those were McKinney's stakes, here and there.

Q. They were unmarked?

A. They were unmarked.

Q. Were they blazed on the sides at all?

A. A little on two sides.

Q. Was there any mark on this whittled space?

A. Not to my knowledge, no.

Q. Did you examine them carefully to see?

A. I looked them over carefully.

Q. You knew the original discoveries had been made there a [71-48] couple of months before and they had a very rainy summer and you would have to examine those stakes critically to read the markings two months later?

A. You can take it from me there was no mark—I examined them carefully—that there wasn't a lead pencil mark on them or anything do you mean?

Q. Yes.

A. There might have been a lead pencil mark on it or something indicating there was a side limit, there was nothing on them whatever on the fraction side here to show they were intended as a stake and

(Testimony of John J. Ford.)

I don't remember any markings on them and I made a memorandum in a book at the time there was no markings.

Q. Weren't you satisfied that those stakes were used by some one attempting to claim that particular piece of ground?

A. I am satisfied they were not.

Q. Why were you satisfied they were not so used, you say they were marked on two sides?

A. They would have been marked if they had been.

Q. You say they were whittled or blazed off on two sides?      A. Yes, sir.

Q. What was the purpose of blazing them off on the second side?

A. It is a custom, at least of mine—I usually whittle them on four sides to make them plain, so a person can see it.

Q. You whittle them on four sides and write on one?      A. That is all.

Q. As a matter of fact it is quite common to establish common end line stakes, that is where two use the same stake as the lower stake for one claim and the upper stake for another—I am referring to the side, the right and left limit [72-49] stake and center end?

A. I have never seen it done by miners—they always put in two stakes.

Q. They put in separate stakes?      A. Yes.

Q. How about center ends, is it customary to use a common stake there?

(Testimony of John J. Ford.)

A. For one center end?

Q. Yes.

A. Not to my knowledge, it is not—I always understood the center end was not absolutely necessary.

Q. You say that you noticed Mr. McKinney's notice claiming down stream 1300 feet for One and also noticed Gates notice for Purdy claiming up stream?

A. That is my recollection of McKinney's and certainly I read Purdy's and Gates' and it certainly read up stream.

Q. Did you measure the distance between those two notices?     A. About 1300 feet.

Q. You knew it was about the distance of one claim?     A. Yes.

Q. Did it ever occur to you that it must be a mistake in that notice of Purdy's in claiming up stream?

A. Here was the question in my mind, that I didn't know whether he had relocated this ground up here or whether he had put this in here intending to locate down stream and located up stream—I am not a mind reader and didn't try hard to solve that problem.

Q. As a matter of fact did you notice the dates on these notices of McKinney and Gates?     A. I did.

[73-50]

Q. What was the date?     A. July third.

Q. On both of them?     A. On both of them.

Q. Were both in the same handwriting?

A. Every notice up and down that creek looked to me to be the same handwriting—I am not an expert.

(Testimony of John J. Ford.)

Q. Were they witnessed by the same witnesses—did you notice the names of the witnesses?

A. There was no witnesses.

Q. However, you knew they were signed on the same date?     A. Yes.

Q. The dates read the same?     A. Yes.

Q. Now, then, wasn't it manifest to you that there was evidently a confusion of some sort there?

A. There was confusion on the ground?

Q. Yes—there must be confusion or a mistake of some sort?

A. Yes, there was a confusion—I don't know what you mean by confusion.

Q. Here were two notices put up the same date by men apparently going out there together, and they are 1320 feet apart, and one claims that distance up stream and the other 1320 feet up stream—you knew there was something wrong about it, didn't you?

A. There was a muddle here on those claims.

Q. You knew there was a muddle?     A. Yes, sir.

Q. Now, the point I make is this, you observed a number of claims there on the creek? [74-51]

A. I observed a number of claims on the creek.

Q. You knew there wasn't room for three full claims, that is Discovery and One Below and Two Below between the original discovery, including the original discovery claim and the fraction you were attempting to locate?

A. I don't know whether I knew that at that time



(Testimony of John J. Ford.)

or not, I knew it afterwards, when I found where Discovery was.

Q. Before you located did you measure up stream and attempt to see?

A. It was not necessary.

Q. Did you do so?

A. If I measured up stream?

Q. Yes, to see if those claims could be full size and could exist there, or anything like full size?

A. Yes, I did.

Q. What did you learn?

A. I learned that they were a little bit short.

Q. You learned that they were short. How far up did you measure?

A. I think we measured, we did measure what is Discovery now and what is One and Two Below now and what is Three Below now and the Surprise Fraction.

A. Three Below—you mean ground below the ground you located as the Surprise Fraction?

A. Yes.

Q. My question goes only to the ground that you measured above the ground you located, above the ground located as the Surprise Fraction. Now, did you get the distance between that and the Discovery claim?

A. Why, I got the distance of the claims, each one, yes, but I [75—52] didn't know where Discovery was at that time.

Q. You knew where Number One was of McKinney's?

(Testimony of John J. Ford.)

A. I knew what McKinney claimed for Number One, yes.

Q. And you saw Mr. Purdy's notice down at the lower end of that very same claim, didn't you?

A. I did.

Q. And claiming up stream, you say?

A. Yes, sir.

Q. Then you knew there would be a conflict between Purdy's notice and McKinney's notice, did you not—you knew there must be a conflict?

A. I didn't think both of them could own the ground.

Q. You knew there were staked by the same party on the same day?

A. That is the way the notice read.

Q. You knew there must be an error of some sort?

A. Whether it was an error or a deliberate blanket I didn't know.

Q. What do you mean by that? Do you think the two men are likely to locate the same claim, going out together on the same day? Or did you make any inquiry to see what actually occurred?

A. There was no one I could inquire of.

Q. You knew McKinney—did you ask him what the situation was? A. I did not.

Q. Did you ever call his attention to the fact, before you made the location there, that there was an apparent conflict of location notices and wanted him to explain?

A. No, he would go over and locate it himself if I did and beat me to it.

(Testimony of John J. Ford.)

Q. You knew as a matter of fact that they were at least attempting [76—54] to claim that ground and you wanted to get in ahead of them if you could—that is what you were trying to do?

A. Until McKinney came over there I didn't know they were attempting to claim the ground, didn't know whether they were attempting to claim the ground or not; they had no sign that they were attempting to claim it and I had no reason to know and no line to find out what they were doing when they put the notice in.

Q. What I am getting at is this—Didn't you, as a matter of fact, before you located the Surprise Fraction placer, know that the same ground was actually claimed or being attempted to be claimed by Purdy through Mr. Gates?

A. All I had was the notice and that didn't show it.

Q. Didn't you have any other intimation that they were claiming it?

A. The only intimation I might have had would be the conversation with McKinney that he didn't own Two Below.

Q. You were satisfied when you made that location or attempted location on August 30th that you were jumping another man's ground?

A. Certainly not.

Q. You were not?      A. No.

Q. You were satisfied you were locating ground another man was asserting a claim to, whether it was a rightful claim or not, were you not?

(Testimony of John J. Ford.)

A. I don't see how I can answer that question in the way you put it, that I knew they had that ground staked.

Q. You knew they were asserting a claim to it of some sort?

A. No, I didn't know for sure what they were claiming. [77—55].

Q. You say you didn't know for sure; what do you mean by that?

A. What I knew was this, if those gentlemen did stake the creek they would probably all go together up and down there.

Q. You knew they were over there first before there were many people in the country—you didn't regard it as probable that they would leave a 1300 feet fraction there?

A. That they would leave it open intentionally?

Q. Yes.

A. I don't believe they would intentionally.

Q. You were satisfied of that when you went there and were satisfied they intended to stake it,—the original men up there had intended to stake it at least?

A. They intended to stake it or left it open for one of their party to stake later and he hadn't shown up; they had lots to look after those days, they had other grounds keeping them busy.

Q. Did McKinney and Gates have any other ground? Did you know of any other ground they had?

A. Why, I know they have other ground in there.

(Testimony of John J. Ford.)

Q. As a matter of fact they were working for wages for James?

A. I have no knowledge of what McKinney was doing of the work on Bonanza.

Q. I am asking you if you didn't know; if you didn't see McKinney and Gates working up there for James on his ground?

A. I don't remember having seen Gates there; I did see McKinney working on Bonanza; I thought it was his own ground—I knew he had bench ground there.

Q. About those stakes you saw—you found a willow stake near every corner of this ground you staked as the Surprise Fraction? [78—56]

A. I found a willow stake at each of these corners.

Q. As they are now marked? A. Yes, sir.

Q. And you say that stake is blazed or hewn out on two sides?

A. Yes, it was whittled on two sides—it might have been only one.

Q. You are not positive whether it was marked there or not?

A. There was no markings on it to indicate it was a corner stake.

Q. Were there any markings on it at all?

A. There wasn't to my knowledge.

Q. Didn't you examine it to see? A. Yes.

Q. Will you swear positively it was not marked?

A. I think I could swear positively it was not marked; there might have been a pencil marking, one word or something, but to the best of my knowl-



(Testimony of John J. Ford.)

edge there wasn't a mark on one of those stakes.

Q. Sutherland was with you at that time?

A. He was up there.

Q. Did you call his attention to the stake and ask him to look at it and see what marks were on it?

A. Dan went over all the stakes about the same time I did.

Q. Now, further about this conversation you had with McKinney. You say that was about four days prior to the time you staked this placer ground?

A. That is the best of my recollection.

Q. Where was that conversation?

A. I went over to Bonanza and I think it was Schultz I met first, and I think, my recollection is, we went down to [79—57] James' ground; I know we found McKinney in there somewhere and that was the day I had the talk with him.

Q. Was anyone else present at that conversation?

A. Not to my knowledge excepting Mr. Schultz and I don't know that he overheard it.

Q. What were you told about Purdy that day?

A. Purdy's name was never mentioned as far as far as I know.

Q. Wasn't Gates' name mentioned?

A. That I am not certain about—when I asked McKinney for a lease on One and Two Below he told me there was another party owned Two Below, but as I remember they were interested in some way or other and he thought that it could be fixed.

Q. You don't know whether he mentioned the name of Purdy or Gates?

(Testimony of John J. Ford.)

A. I am sure he didn't mention Purdy—he might have mentioned Gates's name.

Q. He said he would have to see somebody?

A. Yes.

Q. When did you first meet Gates?

A. I don't know that I have ever met Gates; I asked McKinney—I wanted to meet him, but I didn't meet him.

Q. Before you staked the ground you saw this location notice with Purdy's name, did you not?

A. The first thing I did when I went down there with Sutherland was to read that notice.

Q. It was signed F. W. Purdy by G. L. Gates, attorney in fact?

A. Locator F. W. Purdy, G. L. Gates, attorney, if I remember.

Q. Then did you call to see Gates and McKinney in regard to the confusion of the lines there? [80—58]. A. I had it in mind to.

Q. Did you do so?

A. McKinney came over the next day and I saw it wasn't necessary—I don't say it wasn't necessary because I asked McKinney and told him, "I wish Gates would come over, if Gates is an honest man and looks this over we won't have any trouble about this ground," and McKinney said something about Gates being sick that day and me taking advantage of his sickness.

Mr. LEEHEY.—That is all.

By the COURT.—It is now time for the noon recess. On this matter of the objection and the ruling

(Testimony of John J. Ford.)

I made in regard to notices on the ground adjacent or adjoining this claim, I am not altogether satisfied and if you think it is important, I will hear you at a quarter to two. The strict rule of evidence probably would not make it competent to show what somebody else did.

Mr. RITCHIE.—I think counsel on the other side misconceived our purpose. The only purpose was to show this as a circumstance,—that would have a tendency to show that that was unoccupied and unappropriated domain at that time.

WHEREUPON court took a recess to 2 P. M.

#### AFTERNOON SESSION.

JOHN J. FORD.

Redirect Examination by Mr. DONOHOE.

Q. On your cross-examination the question was asked you regarding how many claims you and your co-owner located in the Shushana region last year—I will ask you to state how many claims you located?

A. Four and a quarter. [81—59]

Q. Name those claims.

A. Number Two Bear Pup.

Q. In whose name was that located?

A. Dan Sutherland. Number Two Above on Big Eldorado; Joe Clark and I got our names on that together; Joe Clark had a half interest, and Smith and partner have another interest, a half interest; Granite Pup Number 1, I located that for Robert Smith,—he had gone to McCarthy for grub.

Q. He was one of your party? A. Yes, sir.

Q. What was he doing at the time?

(Testimony of John J. Ford.)

A. He took out two horses and went to McCarthy for more supplies.

Q. What other claims?

A. The Surprise Fraction.

Q. You were there from about the 16th or 17th of August to the 18th of December?     A. Yes, sir.

Q. And all the claims your party acquired there was  $4\frac{1}{4}$ ?     A. Yes, sir.

Q. Acquired by location?     A. Yes, sir.

Q. That was for all of you?

A. That was for the three of us.

Mr. DONOHOE.—That's all.

(By Mr. LEEHEY.)

Q. Did I correctly understand you to say that you located Two Above on Eldorado Creek?

A. Yes, sir.

Q. That was claimed by a previous locator?  
[82—60]

A. I think I told you so this morning, yes, sir.

Q. Were any of those other claims located or attempted to be located prior to your location?

A. Why there was a bench on Wilson Creek that had run out,—they hadn't done the work on that; the ninety days had gone by, and they hadn't put it on record. I don't think it amounted to anything. We relocated that.

Q. It was previously located?     A. Yes, sir.

Q. In whose name was Number Two Above on Eldorado taken at the time of your location—was it in your name?     A. Joe Clark.

Q. Was that the one Joe Clark was in?

(Testimony of John J. Ford.)

A. Yes, sir.

Q. Do you know who was the previous locator of that ground?

A. I have a note in my pocket— It was J. P. McClain, acting under power of attorney for one M. Lamb.

(By Mr. DONOHOE.)

Q. Did anybody ever make any contest over this location of yours on Number Two Above on Eldorado?

A. No, sir; they never showed up and never did any work.

Q. As far as you know nobody was claiming it but yourself and Clark? A. No.

Q. Regarding this claim on Wilson bench, did you ever perfect that location?

A. On the Wilson bench, yes—we did our work there.

(By Mr. LEEHEY.)

Q. Did you bring suit on that claim, Number Two Above, on Eldorado? [83—61]

A. There was no suit to bring, no.

Q. How do you know there was no suit to bring?

A. Because they hadn't done the work.

Q. That is your assumption?

A. No, that is the truth, they hadn't shown up.

Q. Do Mr. McClain and Mr Lamb, for whom he located, admit that?

A. I don't know where they are; I rather think they did.

Q. They didn't admit it to you?



(Testimony of ohn J. Ford.)

A. I never met them.

Q. That is your assumption, that they have no claim to it?     A. It is simply what Clark said.

Q. It was located before the territorial law went into effect?

A. All I have is Clark's word for that.

Q. And they didn't do any work on it until the first of January?     A. They did not.

Q. And you left there in December?

A. The 18th of December.

Q. And you have no personal knowledge whether they did any work on it or not?

A. They hadn't, up to a few days before that—there was snow and solid frost and it is not likely.

Q. Is that the only reason for locating, because they hadn't done the work?

A. My reason was because Clark came down and asked me if I wanted to stake a claim.

Q. You knew at the time it was a claim that others were already claiming?     A. Yes, and I told Joe so.

Witness excused. [84—62]

**[Testimony of Dan D. Sutherland, for Plaintiff.]**

DAN D. SUTHERLAND, the plaintiff, called and sworn as a witness in his own behalf, testified as follows:

Direct Examination by Mr. DONOHOE.

Q. What is your name?     A. Dan D. Sutherland.

Q. You are the plaintiff in this case?     A. I am.

Q. How old are you?     A. Thirty-one.

Q. How long have you resided in Alaska?

A. About four years.

(Testimony of Dan D. Sutherland.)

Q. What has been your business or occupation since residing in Alaska?

A. I worked for the Road Commission and prospecting.

Q. Where were you prospecting?

A. Around Valdez, and last Summer in the Shushana.

Q. Where were you in the latter part of June and part of July last year?

A. I was working for the Alaska Road Commission

Q. Where?      A. At Teikhell.

Q. You and Ford went into the Shushana together?      A. We did.

Q. When did you start for the Shushana from Teikhell?

A. I think about the 6th—we left McCarthy on the 8th of August.

Q. What time did you arrive in the Shushana region?

A. We got in there around the 18th, the 17th or 18th of August.

Q. There were three of you, yourself and Ford and Smith?      A. Yes.

Q. Were you upon Big Eldorado Creek about the 30th of August? [85—63]      A. I was.

Q. Did you make a location of the ground in controversy in this case known as the Suprise Fraction?

A. I did.

Q. When did you first start to initiate that location?      A. On the 30th of August.

(Testimony of Dan D. Sutherland.)

Q. What was the first act you did towards locating that claim?

A. Well, I was down at the lower end and I looked for some monuments there and couldn't find any; there was only two monuments there at the lower end, that was at the upper end of Three.

Q. That was the lower end of the Surprise Fraction and the upper end of Three as shown on exhibit "A"?

A. Yes, sir.

Q. What monuments were they?

A. There was one for Schultz by McKinney describing the claim down the stream. Number Three and the other was for Richard Bell.

Q. How was it describing the claim?

A. 1320 feet down the stream, Number Three Below.

Q. Was there any other monument there at this upper end of what is now the Surprise Fraction?

A. No, there was not.

Q. Where did you go from there?

A. I went further up the creek.

Q. How far up? A. I went up to Number Two.

Q. How did you know you arrived at the end of Number Two?

A. Well, I read Mr. Purdy's location.

Q. How did Mr. Purdy's location describe the claim? [86—64]

A. Running 1320 feet up stream, by Gates as attorney.

Q. What other notice did you find there, or monument?

(Testimony of Dan D. Sutherland.)

A. There was a monument there, the notice of A. F Nelson.

Q. How did it describe the claim?

A. The same ground, claiming 1320 feet up stream.

Q. Was Mr. Ford with you at that time?

A. No, he was not.

Q. Later, did Ford join you?      A. He did.

Q. And what did you and Mr. Ford do, if anything, towards making a discovery?

A. Well, we were working on location work on Two Above.

Q. You were doing location work on Two Above?

A. Yes.

Q. Did you and Ford then determine on what is now the Surprise Fraction?

A. Yes, I went up and told him there was either a claim there or a big fraction, so we went down and read Purdy's notice first.

Q. Ford read it with you?      A. Yes, he did.

Q. What did you and Ford do then, together?

A. Then we read Nelson's

Q. That was the upper end of the Surprise Fraction?

A. That was the upper end of the Surprise Fraction.

Q. And at the lower end of what is marked on exhibit "A" as Number Two Below?      A. Yes.

Q. What did you do after that?

A. I went down the creek, the left limit, and Ford went down [87—65] the right limit, to see if there was any work or any stakes that I possibly over-

(Testimony of Dan D. Sutherland.)

looked coming up.

Q. Did you see any signs of work or any stakes going down?     A. Nothing.

Q. What did you and Ford do after that?

A. We went down to the lower end of what is the Surprise Fraction now, the upper end of Three, and we read Schultz location by McKinney.

Q. Did you read R. Bell's location, too?

A. Yes.

Q. Then what did you do, go up the creek further?

A. We paced it back up the creek.

Q. Up to Purdy's location notice?     A. Yes.

Q. What did you do next?     A. After pacing it?

Q. Yes.

A. Well, we took a pick and shovel and went down about possibly 60 or 70 feet below the location monument.

Q. Down below whose location monument?

A. Below Purdy's; and on account of a depression in the bank we dug in there a couple of feet or so and found prospects.

Q. What else did you do in the way of prospecting?

A. Well, we took two or three, possibly three or four pans there, and went up then probably ten feet of the location monument, within probably ten feet of the location monument.

Q. Did you do some prospecting there?

A. We did.

Q. You panned the gravel, did you?

A. Yes. [88—66]



(Testimony of Dan D. Sutherland.)

Q. What was the result of your panning?

A. Well, we got some pretty fair prospects there and lots of black sand.

Q. What did you do next?

A. I started to build a monument pretty near on a direct line or a little below Purdy's the Nelson and Purdy monument was pretty near in a line and we set ours over on the left limit.

Q. You erected your monument a little down stream from the Purdy monument?

A. Yes, a little.

Q. About how far?

A. Not very far, probably a foot, I guess hardly that.

Q. What did Ford do about that time?

A. He went down the creek and put up the lower center end.

Q. What did you do after Ford left?

A. I built a monument.

Q. What else?

A. I built a monument, and then I wrote the location notice.

Q. After you had the location notice written, did Ford join you?     A. He did.

Q. What did you do with the location notice after you had it written?

A. I put it under a flat rock on the top of the monument.

Q. You put it under a flat rock on top of the monument?     A. Yes, sir.

Q. What was that location notice written on?

(Testimony of Dan D. Sutherland.)

A. Written on a printed form, a small form.

Q. Was any portion of it visible after you put it under the [89—67] flat rock?

A. There was a corner of it.

Q. I now hand you a paper and ask you to state what that is.      A. That is the same form.

Q. That is the writing?      A. Yes, sir.

Q. That is a true and correct copy of the location notice you posted there at that time?      A. Yes.

Mr. RITCHIE.—We offer this Notice of Placer Mine Location in evidence as Plaintiff's Exhibit "B" and I desire to read it to the jury.

Admitted as Plaintiff's Exhibit "B" and read by Mr. Ritchie, as follows:

**"NOTICE OF PLACER MINE LOCATION.**

Notice is hereby given that the undersigned, a citizen of the United States, over twenty-one years of age, has, on this 30 day of August, 1913, located a placer mining claim, of 191½ acres, more or less, situated in the White River mining district in the Territory of Alaska, and more particularly described as follows, to wit:

Commencing at this initial monument and running down stream 1300 ft. by 330 ft. on each side of this monument, claim to be known as Surprise Fraction, situated between A. F. Nelson's No. 2 Below Big Eldorado claim, and R. Bell No. 3 below, claim beginning at this initial monument and running 1300 ft. down stream northwesterly to senter end, and 330 ft. on each side of monument, corners marked by four willow posts, and

(Testimony of Dan D. Sutherland.)

that I intend to hold and work the same according to the laws and local rules and regulations.

Date of Discovery, Aug. 30.

Date of location, Aug. 30.

DAN SUTHERLAND,

Locator.

Witnesses:

JACK J. FORD."

Q. Now, was that all you did that day toward perfecting this location?     A. Yes, that was all.

Q. And you went back to camp?     [90—68]

A. Yes.

Q. When did you next return to this ground?

A. The next morning.

Q. What did you do next morning toward finishing your location?

A. Why, we cut some stakes coming up.

Q. Coming up from where?

A. Coming up from the camp on Bonanza.

Q. How far was that camp from this property?

A. Well, I should say it would be about two and a half or three miles over the hill.

Q. What did you do?

A. We cut a couple of stakes coming up, and there was a couple up there at Number Two, and we got up to the claim and I started up on the left limit and paced of 330 ft.

Q. You started up on the life limit?

A. Yes, sir.

Q. From what point?

A. From our location monument, and I put in a

(Testimony of Dan D. Sutherland.)

corner post there and called it Number 4 of the Surprise Fraction, and the date of the location, and I put an arrow on the inside, pointing down the stream 1300 feet, and an arrow pointing toward the center monument 330 feet.

Q. At that corner, before you erected the corner stake, did you observe any stakes in that immediate vicinity?     A. Yes, there was.

Q. State what those stakes were.

A. There was one stake there, a spruce stake by Nelson, claiming up stream, or he had an arrow pointing up stream.

Q. Did Nelson claim for himself?

A. He was attorney in fact for Shade. [91—69]

Q. What other stake did you see there?

A. There was a small willow stake there with nothing on it.

Q. Where did you go from that point?

A. I went from that down to the lower center end.

Q. What did you do when you arrived at the lower center end?

A. I paced 330 feet up from the lower center end monument and placed a stake there.

Q. Where?

A. I paced from the lower center end monument 330 feet up on the left limit and put a stake in there and called it the Number 3 corner stake of Surprise Fraction and the date and the locator and I had two arrows on it, one pointing toward the center monument, lower center end, 330 feet and an arrow pointing up stream 1300 feet.

(Testimony of Dan D. Sutherland.)

Q. What did you discover at or near that point in the way of stakes?     A. There was two stakes.

Q. What markings on them?

A. One was Richard Bell's claiming Number Three Below down stream, 1320 feet down stream.

Q. What was the other stake?

A. The other stake, there was nothing on it.

Q. What sized stake was it?

A. It was a stake probably an inch and a half in diameter.

Q. How high?     A. Three feet, probably.

Q. How high was the stake you put in?

A. The stakes would be about four feet.

Q. And about what was their diameter?

A. Probably two inches and a half—they were willow stakes. [92—70]

Q. After you put in that corner post at Number 3, what did you next do on the claim?

A. I came back down to the monument, the lower center end monument.

Q. What did you do there?

A. And I met Mr. Ford there and we went up the creek to where we had made the first discovery the day previous and we started on our location work.

Q. At that time and up to that time, did you discover anything in connection with that piece of ground now covered by the Surprise Fraction that would lead you to believe that that ground had been previously located?

Mr. LEEHEY.—We object to that as calling for a conclusion of the witness.



(Testimony of Dan D. Sutherland.)

Objection sustained; plaintiff allowed an exception.

Q. Did you find any evidence of any work being done upon that ground in the way of mining or prospecting previous to your location? A. I did not.

Q. Did you have occasion that day to visit the two corners on the right limit? A. Not that day.

Q. You testified that you and Ford went up to where you first made the discovery, and went to work? A. Yes, we did.

Q. How long were you working that day, the two of you?

A. We worked about five hours, I guess, until about half past four.

Q. And then went back to your camp?

A. Yes, sir. [93—71]

Q. When did you next return to the property?

A. The next morning.

Q. And who accompanied you that day?

A. Why, Judge Tucker and Mr. Ford.

Q. What did you do that day towards completing your location or otherwise?

A. Well, in fact I didn't do much that day at all.

Q. Did you see Judge Tucker or Mr. Ford put up any stakes?

A. I did, I helped Mr. Tucker line the last side-line stake.

Q. On what limit?

A. That was on the left limit; I was delayed coming down because I was on the trail of some caribou and arrived on the property somewhat late.

(Testimony of Dan D. Sutherland.)

Q. Some time after Ford and Tucker arrived?

A. Yes, sir.

Q. Did you do any work that day?

A. No, I did not.

Q. Did you see anyone put in the side-line stakes on the right limit?

A. Jack Ford was up there—he was putting in the side-line stakes,

Q. You didn't return to the property the next day, did you?     A. No, I did not.

Q. How long was it before you returned to the property again?

A. I think it was on the third of September.

Q. Did you meet McKinney there that day?

A. I did.

Q. Did you have any conversation with him regarding that property?

A. Yes, I did. [94—72]

Q. State the conversation as near as you can remember it.

Mr. LEEHEY.—We object to any conversations with McKinney not in the presence of this defendant or Gates as incompetent, irrelevant and immaterial and not binding upon the defendant.

Objection overruled; defendant allowed an exception.

A. Why, I was down to Wilson that day and was coming up the creek, Big Eldorado, and before I got up to where we had worked before that on our location work, I seen a couple of men working in the bench on the right limit.

(Testimony of Dan D. Sutherland.)

Q. That was within the lines of the Surprise Fraction? A. Yes.

Q. Who were those men?

A. Why, I found out later it was McKinney—I didn't know the other man.

Q. You had never met McKinney previous to that time? A. No.

Q. Did you and McKinney have a conversation there about that time?

A. Why, I could see where we had been working on our location work in the creek and I asked him if he had seen Ford and he said he had some time that day.

Q. What conversation was had regarding the claim at that time?

Mr. LEEHEY.—This goes in under the same objection and subject to the same exception?

By the COURT.—Yes, sir.

A. McKinney told me that Ford had told him that he had staked a fraction there, a 1300 feet fraction and he said that was impossible, or he said his partner had, and I told him I was the one that made the location. [95—73]

Q. What further conversation took place?

A. He said it was impossible and he said the location notice had been moved from the upper end of Three and he gave me an idea how he thought it was moved, he said that probably the wind blew the board off the monument and the squirrels had packed it up the creek a little ways and somebody coming up the creek seen the notice and packed it up to Two.

(Testimony of Dan D. Sutherland.)

Q. You mean to the upper end of the claim?

A. I mean to the upper end of the claim, or Two.

Q. What did McKinney state to you, if anything, as to where that notice originally was posted?

A. He told me that on that morning he had moved the notice before witnesses and before Mr. Ford down to its original place on Number Three.

Q. Down to the upper end of Number Three?

A. Yes.

Q. That would be at the lower end of what is known as the Surprise Fraction shown on Exhibit "A"? A. Yes, sir.

Q. Did you have any further conversation with him about the property?

A. No, I don't remember of anything more—we might have had a few more words, I can't think of them now.

Q. What did you do the rest of the day?

A. I went up and went to work.

Q. Where?

A. Ford was working in the cut in the creek and I went to work in the creek, in the cut with him.

Q. How long did you work there that day?

A. Until about five o'clock. [96—74]

Q. When did you go on the property again?

A. I went up there either on the 5th or 6th—I wouldn't be positive of the date.

Q. What did you do that day?

A. Worked in the bench.

Q. In the cut? A. Yes, sir.

Mr. LEEHEY.—The defendant will admit that

(Testimony of Dan D. Sutherland.)

the testimony of Mr. Ford is sufficient evidence of the necessary location work having been performed.

Q. Did you later on file a certificate of location after the assessment work, after the location and assessment work had been done on the property?

A. I did.

Q. I hand you a paper and ask you to state if that is the certificate of location which you filed and proof of doing the assessment work. (Handing witness paper.) A. Yes, that's it.

Mr. DONOHOE.—We offer this in evidence as Plaintiff's Exhibit "C."

Mr. LEEHEY.—The defendant objects to the introduction of this location certificate as incompetent, immaterial and irrelevant and more especially as not a compliance with the laws of Alaska in force on the date on which it is alleged this location was made and during the period involved in the testimony. I refer to the Act passed by the Territorial Legislature, approved April 30, 1913.

After argument—

(By the COURT.) I think this is a very complete document of its kind. It is not to be expected and never has been the case that miners going into a country, a new country, take lawyers and surveyors with them. It has always been held [97—75] that a substantial compliance in these matters is sufficient. I think as concerns the reference to some natural object or permanent monument or well-known mining claim that the objection is not well taken because it refers to this creek, Big Eldoraro



(Testimony of Dan D. Sutherland.)

Creek, a tributary of Wilson Creek, in the Chathenda Mining District, White River. Nobody can be mistaken. They can easily locate this stream and as to being between No. 2 Below and No. 3 Below, being designated by the names of the relocators—they may be as well known as the former locators, the names may be talked about a great deal. I don't think there could be any failure to identify this ground by this description and that is the purpose of any description, to identify it. Now, as to the description of the boundaries, corner monuments and markings thereof, the description here, while it is not set out affirmatively in technical language, it says, to wit: Commencing at the initial stake. If it were a monument, it would say stone monument, but it says a stake. Then it goes on, running thence 330 feet northerly to Stake No. 1. I think it can be presumed that stake was marked No. 1. It might be more positive to say Marked No. 1, but I think it would be going too far to hold that a location otherwise made in good faith, a valid location, could be nullified and forfeited by such a strict letter of the law and I feel constrained to overrule the objection.

Defendant allowed an exception to he ruling.

The Certificate of Location is admitted in evidence, marked Plaintiff's Exhibit "C" and read to the Jury by Mr. Ritchie, as follows:

#### CERTIFICATE OF LOCATION.

"This is to certify, That the undersigned, a qualified entryman [98—76] under the laws of the United States has located and does hereby

(Testimony of Dan D. Sutherland.)

claim the following described placer mining claim, to wit:

The name of the claim is Surprise Fraction. The name of the locator or the locators is Dan Sutherland. The dates of Discovery and the posting of the location notice are August 30 and August 30, A. D. 1913, respectively. Said claim is 1300 feet long and 660 feet wide. Said claim is located in the White River or Chathenda Mining District, Territory of Alaska, on the Big Eldorado creek, which is a tributary to and near to Wilson creek, and is further bounded by monuments, posts and corners, as follows, to wit:

Commencing at the Initial Stake and running thence 330 feet northerly to Stake No. 1; thence 1300 feet westerly to Stake No. 2; thence 330 feet southerly to lower center end; thence 330 feet southerly to Stake No. 3; thence 1300 feet easterly to Stake No. 4; thence 330 feet northerly to place of beginning. This claim is situated between A. F. Nelson's No. 2 below Discovery and Richard Bell's No. 3 below Discovery on said Big Eldorado Creek.

Location work has been done and performed on said claim equivalent to one hundred dollars at the rate of wages prevalent in the mining above named for the same kind of work, and the said work is described as follows, to wit:

The Construction of a cut 2 feet deep, 21½ feet wide and 45 feet long. Said cut is in the creek

(Testimony of Dan D. Sutherland.)

bottom about 75 *from* the initial Monument, down stream. Also another cut in the bank on the right limit of said creek about 125 feet from the initial monument 18 feet long; averaging 4 feet deep and 4½ feet wide. Said work was done and performed at the instance and under the direction of affiant for the purpose of improving the said claim in compliance to the laws regulating the location of mining claims in Alaska.

Dated Sept. 18, A. D. 1913.

DAN SUTHERLAND,  
Locator.

Subscribed and sworn to before me this 7th day of October, 1913.

[Seal]

J. J. FINNEGAN,  
Notary Public for Alaska.

My commission expires Aug. 19, 1917. [99—77]

Q. Did you cause that instrument to be recorded in the recording precinct of the White River recording district? A. I did.

Mr. DONOHOE.—You admit it is of record?

Mr. FINNIGAN.—Yes, sir.

Mr. DONOHOE.—It is admitted that the location certificate, Plaintiff's Exhibit "C," was duly recorded in Volume 6 pages 250 and 251 of the records of the White River recording precinct on October 7, 1913. Is that correct?

Mr. LEEHEY.—The defendant admits the record subject to the exception formerly made as to the sufficiency of the document recorded—as to its compe-

(Testimony of Dan D. Sutherland.)

tency and admissibility.

Q. Did you later and within ninety days from your location put any additional stakes upon this ground?   A. I did.

Q. Where did you place those additional stakes?

A. I put them on the four corners.

Q. What kind of stakes were they?

A. They were spruce stakes, about three inches in diameter.

Q. How high?   A. Four feet over the ground.

Q. Where did you get those spruce stakes?

A. Cut them down on Johnson.

Q. How far did you have to carry them?

A. Well, two miles, probably.

Q. Is this claim above timber line, this Surprise Fraction?   A. It is.

Q. Where did you place those new stakes?

A. Placed them at 4 on the left limit—

Q. Where did you place them on the corners with reference to [100—78] the first stakes you had up?

A. I tied them to the original stakes.

Q. What markings did you put on in regard to the corners, to the other stakes?

A. The same markings that were on the original stakes, the first stakes.

Q. Were these new stakes blazed?

A. They were, on four sides.

Q. Why did you put those spruce stakes in?

A. The willow stakes we thought were a little small.

(Testimony of Dan D. Sutherland.)

Q. When you staked this claim were there any spruce stakes you could have gotten in that immediate vicinity or any larger stakes than the ones you first used?     A. No; not for stakes.

Q. Those were the largest you could get then?

A. Yes, sir.

Q. And you put those spruce stakes in within ninety days from the time of your location?

A. Yes, sir.

Mr. DONOHUE.—That will be all.

Cross-examination by Mr. LEEHEY.

Q. You saw the stakes about this claim which you located as the Surprise Fraction before you made any attempted location of it, did you not?

A. Which stakes?

Q. The stakes that were at the different corners of the Fraction or what you call the upper corners of Number Three and the lower corner of Number Two?     A. I saw them there, yes. [101—79]

Q. You were at each of those corners before the 30th of August, 1913?

A. No, I can't say I was at the corners.

Q. Then you didn't see all the stakes, or do you know whether there were any stakes there then?

A. On the corners?

Q. Yes.

A. No, I wasn't to the corners before that date.

Q. Then as a matter of fact when you made the location on August 30, 1913, you didn't know whether the claim was staked or not?

A. Well, there was no location monument there in



(Testimony of Dan D. Sutherland.)

the creek on either end.

Q. Wasn't there a location monument at the lower end?

A. I mean taking in what is now the Surprise Fraction.

Q. Wasn't there a location monument at what you call the upper end of Number Three?

A. Yes, there was.

Q. And wasn't there another location monument at the upper end of this particular claim you staked as the Surprise Fraction?     A. There was.

Q. There was a location monument at both ends?

A. Yes.

Q. Now, you saw the location notice of Purdy at the upper monument?     A. Yes, sir.

Q. Right on the upper monument?

A. Right on the upper monument, yes.

Q. And that same upper monument, did it contain another location notice? [102—80]     A. No.

Q. It was also used as a lower center end of the claim above it, was it not?

A. There was no other notice there on that monument.

Q. No other notice but that one?

A. That is all.

Q. And you determined that to be a location monument?

A. I did—there was a location notice written.

Q. Did you go to the corner, the upper corner on the right limit or where the upper corner should be placed, that is to say about 330 feet off to the right

(Testimony of Dan D. Sutherland.)

of the creek from that location notice?

A. Not that day.

Q. Did you at any time prior to August 30, 1913?

A. No, I did not.

Q. Then did you go to the corner on the left limit, about 300 or 330 feet to the left of that monument where you saw this location notice of Purdy?

A. No.

Q. You didn't go there either prior to the 30th of August?     A. No.

Q. So you made no investigation to see whether there were any stakes on this claim at those points prior to the 30th of August?     A. No.

Q. Now, did you go down to what is now the vicinity of your lower corner on the right limit before the 30th of August, 1913, to see whether there were any stakes there?

A. No, I did not. You are speaking of the corners now?

Q. Yes.     A. No. [103—81].

Q. Did you go to what is the vicinity of your present lower corner on the left limit on or before August 30, 1913, to see whether there were any stakes there?

Mr. DONOHOE.—These questions have been prior to the 30th of August and now counsel puts it on or before the 30th of August.

Q. Did you go to the corner, what is in the vicinity of your present upper corner on the right limit, on the 30th of August, to see whether there were any stakes there?     A. No, I did not.

(Testimony of Dan D. Sutherland.)

Q. Did you go to the same corner on the left limit on the 30th of August to see whether there were any stakes there?     A. No.

Q. Did you go to the vicinity of your present lower corner on the left limit on or before the 30th of August to see whether there were any stakes there?

A. No, sir.

Q. Did you go to the vicinity of your lower corner on the right limit on or before August 30th to see whether there were any stakes there?     A. No.

Q. Then when you made this location on the 30th of August, 1913, that is, when you posted this notice and proceeded to put up these monuments, you didn't know whether that ground was staked by some one else or not, did you, from your knowledge?

A. I did.

Q. How did you know if you hadn't been to the corners?

A. I went by the location on both ends of this fraction.

Q. Simply because that location notice said that they claimed [104—82] that many feet up stream, you concluded it was no use to see whether there were any location monuments that would conflict with the location notice, in other words you took the location notice for it?

A. At that time, yes.

Q. How was this location notice placed there when you found it the one claiming 1320 feet up stream and was at the upper end of your Surprise Fraction?

A. It was supposed to be a rock monument.

(Testimony of Dan D. Sutherland.)

Q. How was it placed?

A. There was a rock laid on top.

Q. It was flat on top of this rock monument and another stone on top of it?     A. Yes, sir.

Q. A light stone?     A. It was a flat rock.

Q. A rock a man could lift with one hand?

A. Easy.

Q. A rock one could throw a distance of several feet?     A. I don't know.

Q. You could lift it with one hand anyway?

A. Yes.

Q. Did you go upstream and undertake to measure or compute the length of that claim upstream 1320 feet?     A. Which claim?

Q. Which ever claim it was running upstream from the place where you saw this notice?

A. Yes, I measured that.

Q. What did you find at the upper end?

A. In the way of monuments?

Q. Yes. [105—83]

A. Found two monuments there.

Q. What was there at each monument, describe them?

A. There was one, the McKinney staking for Aleck Kingwall—

Q. You are speaking of the claim above where you located the Surprise Fraction?

A. Yes, and he was staking downstream, 1320 feet down the stream from that point.

Q. How many feet downstream from that point was it to where you saw this location notice of Purdy?

(Testimony of Dan D. Sutherland.)

A. It was short of a claim length.

Q. It was evident to you, was it not, that the claim which McKinney located for Kingwall was conflicting with the claim which Gates located for Purdy, if it was located as you thought it was from the notice?

A. How is that?

Q. It was evident to you if Kingwall's claim was 1320 feet downstream, and when you got down 1320 feet you came to a monument where Purdy's notice was claiming 1320 feet upstream, there must have been a conflict between them, or did you observe that?

A. It was a little short between the monuments I know.

Q. It was less than 1320 feet between them?

A. Yes.

Q. And one notice claimed that 1320 feet downstream and the other notice claimed the full distance upstream, did they not?     A. Yes.

Q. Didn't it occur to you there was a conflict between those two claims?

A. That is the way those location notices read.  
[106—84]

Q. Didn't it occur to you that there was a conflict between those two claims or did you notice that? Can't you answer whether you observed the conflict there or not?     A. I can't say I did.

Q. Did you notice the position of the Discovery claim on Big Eldorado Creek?

A. Well, I knew the position of what was supposed to be the Discovery claim.

Q. About how many feet was it from the lower end



(Testimony of Dan D. Sutherland.)

of that claim down to where you found this monument and Purdy's notice—from the lower end of the Discovery claim?     A. Well, about 1320 feet, I guess.

Q. And how did Mr. Kingwall designate his claim, what name was given to it?

A. Number One Below.

Q. That is the claim located by McKinney for Kingwall?     A. Yes.

Q. And how was Purdy's claim designated, the one located by Gates?     A. Two Below.

Q. And those two claims were in between the Discovery claim and this monument where you saw Purdy's notice, were they?

A. They were in between Discovery and what is now Surprise Fraction.

Q. And this monument where you found Purdy's notice is right on the line, the upper end of your Surprise Fraction, is it not?     A. It is.

Q. Now, then, did you know of Mr. Purdy claiming this ground that you staked as the Surprise Fraction?     [107—85]

A. Did I know of his claiming it?

Q. Yes.     A. No, I did not.

Q. Did you have no intimation of any sort that he claimed in conflict with McKinney and his client or his partner or principal?     A. No, I can't say I did.

Q. As a matter of fact, didn't you know that Mr. Purdy or Mr. Gates as his representative, was claiming that very ground that you staked?

A. No, sir; I did not.

Q. You are positive of that?     A. Yes.

(Testimony of Dan D. Sutherland.)

Q. Did you make any effort when you saw the apparent conflict in these location notices to hunt the matter up and find out how those claims lay?

A. Well, as far as the claim was designated, I did.

Q. What do you mean by that?

A. I mean the position of the stakes, to find out if there was any stakes on either end of the claim.

Q. You just told me you didn't go and examine any of those stakes, the corner stakes?

A. I said not on that date.

Q. When did you examine them at all? After the 30th of August, did you? A. No, I did not.

Q. So, as a matter of fact, you simply took this location notice for it, without ever going to examine the places where stakes should be to see if that Surprise Fraction, whatever ground you located as the Surprise Fraction, was otherwise [108—86] staked? A. Not before that date.

Q. Did you on that date, on August 30th?

A. I did.

Q. Did you go to each of these corners?

A. On the right limit I did.

Q. You did on the 30th of August go on the right limit?

A. I went down on the right limit of the claim.

Q. How far, to the right limit, to the extreme right limit of the claim?

A. I went down to the extreme right limit of the claim.

Q. Did you go to the vicinity of where you afterwards placed your upper corner on the right limit?

(Testimony of Dan D. Sutherland.)

A. Yes, I did.

Q. Did you go there on August 30th?

A. Yes, on August 30th.

Q. Did you on the same day go to the place where you afterwards placed your lower corner on the right limit?     A. I did.

Q. On the 30th of August?

A. On the 30th of August.

Q. Now, tell us what you found in the way of stakes in the vicinity of where you afterwards placed your upper corner on the right limit,—what stakes did you find there?     A. There was three stakes.

Q. Describe each stake and the markings on it.

A. One stake was a spruce stake, staked by Mr. Nelson for Shade.

Q. It was Mr. Shade's claim and Nelson was his attorney in fact? [109—87]     A. Yes.

Q. And that was claiming 1320 feet up stream?

A. He had an arrow pointing up stream.

Q. What was the next stake shown?

A. The next one was for a bench claim.

Q. That claimed a piece of ground lying away from the creek?     A. Yes, sir.

Q. What did the other stake show?

A. There was nothing on it.

Q. What kind of a stake was it?

A. A willow stake.

Q. How large?

A. It was a willow stake, probably an inch and a half thick.

Q. How high above the ground?

(Testimony of Dan D. Sutherland.)

A. Probably two and a half or three feet; it was chipped on two sides with a jack knife, flattened off on two sides.

Q. Was there any writing on those sides?

A. No, sir.

Q. Did you examine it carefully to see whether there was any writing?     A. I did.

Q. Are you positive there was no writing?

A. I am.

Q. Was the hewing on the stake or chipping quite fresh?     A. No, I wouldn't call it fresh.

Q. Would it give you any indication of how long it had been there—do you think it was there a day or two or a month or two?

A. It was weather-beaten some.

Q. Was the stake green or pretty well dried out?

A. It wasn't green then. [110—88]

Q. It was pretty well dried out, or do you remember?     A. I couldn't say how dry it was.

Q. Did you examine the stakes or rather state what stakes you saw at the vicinity of where you afterwards placed your corner on the right limit?

A. There was two stakes.

Q. Describe those?

A. There was one, I think it was a spruce stake, of Richard Bell, claiming Number Three downstream, an arrow pointing downstream.

Q. What was the other stake?

A. There was nothing on the other stake.

Q. What kind of a stake was it?

A. A willow stake.

(Testimony of Dan D. Sutherland.)

Q. How was it marked, if at all?

A. There was no markings.

Q. Was it blazed or hewn?      A. It was, yes.

Q. How? On how many sides?

A. Well, it was hewed on two sides, I think.

Q. How large was it?

A. It was something like the other stake, a small stake.

Q. It looked very much like the willow stake you saw at the upper corner on the right limit?

A. It was a willow stake about that size.

Q. And appeared to have been there about that long?      A. I couldn't say how long.

Q. Did it appear to be quite fresh or appear to have been there some weeks?

A. No, it didn't appear to be fresh.

Q. Was it somewhat weather-beaten? [111—89]

A. Yes, it was.

Q. Was it green or somewhat dried out?

A. I couldn't say how long it had been there.

Q. Wasn't it very similar in size and in the way it was hewn and every other appearance to the willow stake you saw at the upper corner on the right limit—weren't the two willow stakes very much alike?

A. Well, I don't know, I couldn't say that, this one was a shorter stake.

Q. How long was it?

A. Probably two feet, possibly a little over.

Q. Did you look to see whether there were any markings on that stake?      A. I did.

Q. Were there any?      A. No.



(Testimony of Dan D. Sutherland.)

Q. Are you positive there was none?

A. Yes, I am.

Q. Did you examine it carefully to see whether there were any markings on it?

A. Well, I looked at it where it was hewed.

Q. You say you did not on August 30th or prior to that time examine the corners on the left limit in the vicinity where you afterwards placed your corner?     A. No.

Q. How long after that did you examine those places, how long after August 30th, 1913?

A. The 31st.

Q. The next day?     A. Yes.

Q. What stakes did you find in the vicinity of where you placed [112—90] your upper corner on the left limit?     A. There was two stakes.

Q. Describe each stake and the markings on it?

A. There was Mr. Shade's by Nelson claiming 1320 feet upstream and another willow stake.

Q. About how large?

A. Probably an inch or an inch and a half.

Q. And how high?     A. Couple of feet.

Q. And how was it hewn, if at all?

A. I wouldn't be positive about that; that stake, the bark was either off of it or it was chipped all around, I wouldn't be sure.

Q. Wasn't it chipped on two sides?

A. It might have been—it was chipped on one side I know.

Q. And you think the bark was off of it?

A. Yes.

(Testimony of Dan D. Sutherland.)

Q. And was it a green stake?

A. No, it wasn't a green stake.

Q. Were there any markings on it?      A. No.

Q. Did you examine it carefully to see whether there were any markings on it?      A. Yes, I did.

Q. And couldn't see any?      A. No.

Q. Was it quite clean and fresh as though it had been recently hewn or somewhat weather-beaten?

A. It was somewhat weather-beaten.

Q. As a matter of fact, it was something like the two willow stakes you saw on the right limit you have just described? [113—91]

A. Well, I guess they were something the same.

Q. When did you go and inspect the vicinity of where you placed your lower corner on the left limit?

A. The same day, the 31st of August.

Q. State if you found any stakes there.

A. I did.

Q. What were they?      A. I found two stakes.

Q. Describe each.

A. One for R. Bell claiming 1320 feet downstream, a small willow stake.

Q. What was the size of it?

A. It was a small stake, probably two inches in diameter.

Q. About how high?

A. Three feet probably. I didn't measure those stakes at all.

Q. How was it hewn, if at all?

A. Yes, it was,—I think that stake was hewn on the four sides.

(Testimony of Dan D. Sutherland.)

Q. Did you examine it to see whether there were any markings on it?     A. I did.

Q. Did you observe any markings?     A. No.

Q. Did you look very closely for them?

A. I did.

Q. Was the hewing fresh?     Or was it somewhat weather-beaten?     A. It was weather beaten.

Q. Now, as a matter of fact were not the four stakes that you have described, willow stakes and they were all about the same size?

A. No, I couldn't say they were all about the same size. [114—92]

Q. They all ran from two to three feet high?

A. They were willow stakes—I guess they were probably about two and a half feet high.

Q. And probably an inch and a half to two inches in diameter?     A. Yes.

Q. And were all hewn, some on two sides and one you think was hewn all the way around?

A. Yes, sir.

Q. That hewing did not appear to be fresh—they were all somewhat weather-beaten?     A. Yes.

Q. As a matter of fact didn't they indicate that they had all been placed there about the same time?

A. I couldn't say.

Mr. LEEHEY.—That is all.

Witness excused. [115—93]

**[Testimony of O. A. Tucker, for Plaintiff.]**

O. A. TUCKER, a witness called and sworn in behalf of the Plaintiff, testified as follows:

Direct Examination by Mr. DONOHOE.

Q. What is your name?      A. O. A. Tucker.

Q. Where do you reside?      A. In Cordova.

Q. How long have you resided in Cordova?

A. Well, about five years.

Q. Were you last summer in the Sushana mining district?      A. I was.

Q. Were you on or about the first day of September, 1913, on the creek known as Big Eldorado Creek?      A. I was.

Q. Were you on the land in controversy in this action?      A. Yes, sir.

Q. How come you to go over there on September 1st, 1913?

A. I went over there on the request of Mr. Ford and Mr. Sutherland.

Q. When did Ford and Sutherland speak to you first in reference to this land that is now in controversy?

A. On the 31st of August—the evening of the 31st when I got back to camp.

Q. For what purpose did you go over on the land covered by the Surprise Fraction on the first day of September, 1913?

A. The boys stated to me somewhat the circumstances of the location of the claim they had made over there and wanted me to go over and examine the

(Testimony of O. A. Tucker.)

conditions that existed there and help them perfect their location.

Q. When you arrived over there on the first of September, what did you first do? [116—94]

A. I went down to the creek, the Big Eldorado Creek ahead of these boys.

Q. Ahead of Ford and Sutherland?

A. Yes; Sutherland killed some caribou and they were up there, and I says, "I will go ahead."

Q. What did you do when you arrived on the ground?

A. I went down the creek, on the right limit of the creek.

Q. How far down did you go?

A. I went down hunting for this claim from the monuments as they had described them to me, and I missed the upper monuments going down and came up against the lower monument of the Surprise Fraction.

Q. What did you do after that?

A. After I found the property,—I had some little difficulty in locating it—I then worked back up on the left limit, that is close to the creek.

Q. In going over the claim, going down the right limit, and coming back on the left limit, did you see any signs of any mining or prospecting having been done on that land? A. No, I did not.

Q. Now, did you at any time while there on the first place any stakes or do anything towards completing the location of the claim? A. Yes.

Q. What stakes did you place?



(Testimony of O. A. Tucker.)

A. I put some side-line stakes on the right limit.

Q. Do you recall how many you put in?

Mr. FINNEGAN.—We admit the claim was properly staked.

(It is admitted by the defendant that the claim was properly staked on the ground.)

Q. Later on that day when you came to the upper end of the [117—95] Surprise Fraction, did you meet Sutherland and Ford?

A. Yes, I met Ford first.

Q. What did you do in reference to any monuments—what monuments did you find at the upper end of the Surprise Fraction, in the center?

A. I found three monuments there.

Q. Describe them.

A. One was the Surprise Fraction monument; it had the location notice of the Surprise Fraction in it. The other was the Purdy location notice and the other was the Shade-Nelson location notice. There was three there in close proximity.

Q. Where was the Purdy location notice?

A. The Purdy location notice was on the upper end of the claim.

Q. On the upper end of the Surprise Fraction?

A. On the upper end of the Surprise Fraction, yes—adjacent to the other.

Q. Where was the notice itself—what was the notice, the Purdy notice, written on?

A. It was written on a board.

Q. And where was that board?

(Testimony of O. A. Tucker.)

A. The board was under a rock placed on top of the monument.

Q. Did you make a copy of that notice?

A. Yes; Mr. Ford and I together made a copy of it.

Q. Have you that copy with you?     A. I have.

Q. Do you know that the copy you have in your book is a true and correct copy?     A. I do.

Q. Will you produce that book?

A. Yes, sir (witness does so).     [118—96]

Q. Read that copy as you made it from the notice on th first day of September, 1913.

Mr. LEEHEY.—This is in your own handwriting?

A. I think this is in the handwriting of Mr. Ford; he wrote it with my pencil, and I read the notice to him, and then we read it back and compared it between ourselves; I think it is in his handwriting, although it seems as though his handwriting is somewhat similar to my own; it is in his handwriting. My fingers got cold; I cut my finger the day before, and I read it to him and then took the book and and compared it, he and I together.

Mr. LEEHEY.—No objection.

Q. Read the notice as you have it in your book.

A. Notice of Placer Location. I the undersigned locate and claim twenty acres for placer mining purposes, situate on Eldorado Creek, a tributary of Wilson Creek, Chisana Mining District, Alaska, more particularly described, to wit: Commencing at this initial post and running up stream 1320 feet to center end post and 330 feet on each side of initial post and upper center end post. Discovered and located July

(Testimony of O. A. Tucker.)

3d, 1913. Locator, F. W. Purdy. G. L. Gates, attorney.

Q. Describe to the jury the kind and size of the board on which this notice was written.

A. This was a board I took to be a box, a piece of milk box, something of that kind.

Q. What was the size of the box?

A. About 18 inches long and probably four inches wide, something like that; the board showed some evidence of being weather-beaten.

Mr. DONOHOE.—That's all. [119—97]

Cross-examination by Mr. LEEHEY.

Q. Are you positive that that date was July 3d?

A. I am.

Q. You are positive it wasn't July 6th?

A. I am.

Q. How was it written, in figures?

A. In figures, yes.

Q. Was it just the figure, or were the words "rd" or "th" after it?

A. July 3, 1913; I made this verbatim.

Q. There were letters after the figure 3, were there? A. No.

Q. Was the letter or figure 3 clearly legible, or was it one that might be mistaken for another figure?

A. The figure 3 was legible; that is my recollection of it.

Q. Did that notice appear to be written all in the same handwriting? A. Yes.

Q. Was there any witness signature to it?

(Testimony of O. A. Tucker.)

A. No witness.

Witness excused.

Plaintiff rests.

Mr. LEEHEY.—The defendant moves for a non-suit in this action upon the ground and for the reason that sufficient facts have not been established by the testimony to entitle the plaintiff to recover or to support his alleged cause of action. This motion is made primarily because we contend that the location certificate which is essential to the validity of plaintiff's location is not such a certificate as is entitled by law to record and is not in compliance [120—98] with the laws of Alaska.

Motion overruled; defendant allowed an exception.

#### DEFENSE.

[**Testimony of George L. Gates, for Defendant.**]

GEORGE L. GATES, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. FINNEGAN.

Q. What is your name?      A. George L. Gates.

Q. Where do you reside?

A. I have been residing at Forty Mile for the last six years; my home is in the State of Oregon.

Q. Forty Mile—is that in the Yukon Territory or on the American side?

A. It is in the Yukon Territory.

Q. How long have you resided in Forty Mile?

A. I have resided there about six years.

Q. How long have you been in Alaska and the Yukon Territory?      A. I came to Alaska in 1895.

(Testimony of George L. Gates.)

Q. About nineteen years?

A. Yes, sir; about nineteen years.

Q. What has been your occupation during that time, principally?     A. Mining expressly.

Q. Where were you about the latter part of May, 1913?     A. Forty Mile.

Q. Was it at that time, the latter part of May, that you heard of the Shushana strike?

A. Yes, sir. [121—99]

Q. In what manner did you hear of it?

A. I received a letter from Nelson stating that he had made a discovery, him and his partners, in the Shushana country, and requesting me and McKinney to come and meet him in Dawson at the earliest possible date and accompany him back,—that he wished to take a small boat up the White River and would wait there until we arrived in Dawson to accompany him.

Q. You had known Nelson before?     A. Yes.

Q. How many years?

A. I had known him about ten years previous to this.

Q. Had you had any business relations with him?

A. Yes, I have been partners with him in some mining operations.

Q. And immediately upon receipt of his letter, did you leave Forty Mile?

A. We left within two or three days, the first steamer that came up.

Q. Where did you go to?     A. Dawson.

Q. Did you meet Nelson there?     A. Yes.



(Testimony of George L. Gates.)

Q. When did you leave Dawson?

A. We left Dawson about the first days in June.

Q. Who constituted the party?

A. Nelson and McKinney and myself.

Q. And you proceeded to the Shushana diggings?

A. Yes, sir.

Q. Up the White River?

A. Yes, up the White River. [122—100]

Q. In what manner did you travel, did you go over-land?

A. No, we went up the river in a small boat, folding boat.

Q. Did you have an outfit with you?

A. Yes, sir.

Q. When did you reach the Shushana?

A. We reached the Bonanza Creek the evening of the 26th of June.

Q. How far up the White River did you go in the folding boat?

A. We came about 125 or 130 miles as near as I can estimate it.

Q. Then how did you progress?

A. Then we progressed with pack horses from there into the diggings; at that point we met Mr. Taylor and Mr. Doyle with pack horses and came with the pack train on over.

Q. You reached the diggings about June 26th?

A. Yes.

Q. What did you do immediately upon your arrival in the diggings with reference to prospecting?

(Testimony of George L. Gates.)

A. We went around over the different creeks looking at them and panning and prospecting.

Q. During your prospecting tour, did you visit Eldorado Creek?     A. Yes, sir.

Q. Did you upon a certain day in July, 1913, locate a placer mining claim on Big Eldorado Creek—

A. Yes, sir.

Q. Did you upon a certain day in July, 1913, locate a placer mining claim on Big Eldorado Creek for F. W. Purdy as his agent?

Mr. DONOHUE.—We object to the introduction of any testimony tending to show that this witness located a claim for F. W. Purdy on the ground that there is no proper foundation laid for the introduction of such testimony, in this, that it is [123—101] not shown that the witness complied with the requirements of the Act of Congress dated August 1st, 1912, relative to locating placer mining claims for another as attorney in Alaska.

By the COURT.—The objection will be sustained at this time.

Mr. LEEHEY.—Do I understand we must show the record of the power of attorney before the actual location? I think we are entitled to show the location before the power of attorney is recorded.

By the COURT.—I don't think it is very important at this time, it simply goes to the order of proof anyhow and if it is not shown that he is authorized to make the location as attorney in fact for another, then of course the testimony will be stricken out.

Mr. DONOHUE.—The only point I make is that

(Testimony of George L. Gates.)

in case the defendant is unable to establish that he has complied with the Act of August 1st, 1912, all this testimony would have to be stricken out and it would be a useless procedure to go ahead before the foundation is laid.

By the COURT.—I think as far as this question goes he may answer it. The objection will be overruled, and he may answer this question.

Plaintiff allowed an exception to the ruling.

By the COURT.—It is admitted as a preliminary question, with the understanding that if it is not shown that he is authorized to make a location under the law, this testimony will be stricken out.

Q. Did you upon a certain date in July, 1913, locate a placer mining claim upon Big Eldorado Creek for F. W. Purdy as his agent? [124—102]

A. Yes, sir.

Q. What date was that?

A. On the 6th day of July.

Q. What did you do on that date relative to locating that claim; what acts did you perform?

Mr. RITCHIE.—We renew the objection; before they can show what he did by virtue of a power of attorney, he must show he had a sufficient power of attorney.

By the COURT.—I don't feel like controlling counsel in the order of proof. They may for certain reasons have prepared their case, arranged to call witnesses along certain lines, and I don't feel like controlling them and directing that they should prove certain things first. You understand they

(Testimony of George L. Gates.)

have to prove that they had a power of attorney in the proper way and without that, this testimony will be stricken out.

Mr. FINNEGAN.—I will say that we hardly expected to put any witnesses on the stand this afternoon, we didn't know plaintiff's case would be finished so soon.

By the COURT.—The objection will be overruled at this time with the same understanding as to the other question.

Plaintiff allowed an exception to the ruling.

Q. State on July 6th what acts you performed relative to staking a placer mining claim.

(It is understood this and all similar questions go in under the same objection and exception.)

A. I panned on the claim, prospected some there.

Mr. DONOHOE.—What claim have you reference to?

A. I have reference to the claim I staked for Mr. Purdy on Big Eldorado. [125—103]

Mr. DONOHOE.—Number Two Below on Big Eldorado? A. Yes, sir.

Q. Who accompanied you on this day?

A. Mr. Doyle, Mr. Nelson and Mr. McKinney.

Q. Where was your camp situated?

A. Our camp was situated on Little Eldorado, near its junction with Bonanza Creek.

Q. And you proceeded from your camp on Little Eldorado, over Gold Hill towards Big Eldorado?

A. Yes, sir.

Q. Mr. Thomas Doyle, W. E. McKinney and Nel-

(Testimony of George L. Gates.)

son were with you?      A. Yes, sir.

Q. You may continue and and state what acts were performed by you in the location of the claim, Number Two Below on Big Eldorado—did you erect monuments?

A. I erected a monument at the lower end of this claim, stepped the ground off from the lower end of Number One, paced it off from there down 1320 feet and built a stone monument about this high (indicating) and wrote the location notice, put it in this monument and then went from there to the lower corner on the left limit and put a willow stake in, about this high (indicating), about an inch and a half or two inches through and marked that corner Lower left limit Claim Number Two Big Eldorado and then I went from there to the upper left limit corner.

Q. Describe that stake to the jury.

A. It was a willow stake.

Q. A green stake?      A. It was green, yes.

Q. Did you blaze the stake? [126—104]

A. Blazed it on two sides, yes.

Q. In what manner?

A. With my pocket knife.

Q. What markings did you make on the stake?

A. I marked it North lower corner left limit No. 2 Big Eldorado.

Q. Then what did you do?

A. Then I went to the other corner on the same limit, the upper corner on the left limit, stepped from the upper end post and put the corner what



(Testimony of George L. Gates.)

be about 330 feet and marked it.

Q. Of what did the corner consist?

A. A willow stake about this high (indicating), two feet and a half, perhaps three feet high.

Q. Describe the stake.

A. The stake was two and a half feet.

Q. Was that blazed—state whether you put any markings on the stake.

A. I blazed the stake, whittled it off flat on one side and marked it, upper corner post No. 2 left limit Big Eldorado.

Q. What kind of a stake was that?

A. It was a willow stake, a green willow stake, about two feet and a half or three feet tall, driven in the ground,—sharpened at one end and driven in the ground.

Q. Then what did you do?

A. Then I went over on the right limit and put corner posts there.

Q. Which corner?

A. The upper corner post, right limit.

Q. Describe it.

A. I whittled it off the same as the other stake with my pocket [127—105] knife and wrote on it, Upper corner post, right limit, claim No. 2 Big Eldorado.

Q. What kind of a stake was it?

A. It was a green willow stake, two or three feet high, sharpened at one end and driven in the ground.

Q. Then what did you do?

A. Then I went down and put in the lower corner

(Testimony of George L. Gates.)

post, right limit.

Q. Describe it.

A. I marked it the same as I did the other one; I wrote lower corner post, right limit, claim No. 2 Big Eldorado.

Q. I believe you stated that you had panned in the creek.

A. Yes, sir.

Q. What was the result of your panning?

A. A few colors of gold.

Q. In how many places did you pan, if more than one?

A. Two or three—two places.

Q. With reference to the end lines of your location, what portion of the claim did you pan?

A. I panned one pan near the upper end and I think the other one was near the middle of the claim.

Q. Relative to the colors you found in panning—what did that indicate to you?

A. It is indicated that it was valuable for mining purposes.

Q. What else did you do relative to completing the location of the claim?

A. I wrote my location notice and placed it under a rock on the lower end of the claim.

Q. Upon what was that location notice written?

A. It was written on a piece of board about this long (indicating) [128—106] and about four inches wide—about 18 inches long and about four inches wide—a piece of board taken from a small box, perhaps a milk case.

Q. Did you at that time make a copy of the location notice?

A. No, sir.

(Testimony of George L. Gates.)

Q. Who were present or were any persons present when you placed your location notice on the monument?

A. Mr. McKinney was present and Mr. Doyle and Mr. Nelson.

Q. Did they witness your location notice?

A. I don't remember whether they signed it as a witness or not.

Q. Will you kindly describe your location monument?

A. The location monument was a monument built of stone, about two feet and a half high.

Q. Where did you place your location notice?

A. I placed it on the top of this monument, with a flat rock on top of it.

Q. You speak of this monument, what monument do you mean?

A. I mean the initial monument at the lower end of the claim, No. 2 Big Eldorado.

Q. The lower center end?

A. The lower center end, yes.

Q. Previous to staking that claim, did you measure the claim?

A. Yes, I measured it down from No. One, from the lower end of Number One.

Q. How did you measure it?

A. Stepped it, paced it.

Q. What was your estimate of the distance, of the length of the claim?     A. About 1300 feet.

Q. The claim as staked by you, or as measured and staked by [129—107] you—did you purposely

(Testimony of George L. Gates.)

measure that and stake it less than 1320 feet?

A. Yes, I generally do that in staking ground, get a little short so as not to have a fraction.

Q. Did you measure from your center end monument to your corner monuments on both limits?

A. I paced that off also.

Q. The four corners? A. Yes, sir.

Q. About what did they approximate?

A. About 300 feet each way from the center end post.

Q. Did you do any other acts toward completing the location of that claim—did you perform any other acts at that time?

A. No, I don't remember of doing anything else there.

Q. Were the parties you have mentioned present with you during the measuring and staking of this claim, that is W. E. McKinney, Nels P. Nelsons and Thomas Doyle?

A. They were on the claim there, yes.

Q. Did they see you place the stakes? A. Yes.

Q. Were they with you when you placed the stakes?

A. They were not right with me—they stopped down near the center end post and I went up on the hill alone and placed these stakes.

Q. What is the topography of the claim? Can you see from one end to the other? A. Oh, yes.

Q. Can a person in the creek see the corner stakes on both sides? A. Yes, sir. [130—108]

Q. What date did the notice which you placed on

(Testimony of George L. Gates.)

the lower center end monument bear?

A. July 6th.

Q. Do you remember what the contents of that notice were, what the markings on it were?

A. Well, pretty close to it, I think, yes.

Q. State what they are?

Mr. DONOHOE.—We object on the ground that it is not the best evidence.

By the COURT.—If he has a copy of the original or made a copy of it—

Mr. FINNEGAN.—He testified he made no copy of it.

By the COURT.—You asked him if he made a copy at the time?

Q. Since the 6th day of July, have you made a copy of your original location notice? A. No.

Q. Have you the original location notice in your possession? A. No, I have not.

Q. To the best of your knowledge where is the location notice?

A. To the best of my knowledge the original location notice is on the claim.

Q. Will you now describe as best you can the contents of that location notice.

Mr. DONOHOE.—We object to that question on the ground that it is not the best evidence; unless the witness can testify to the notice complete, he should not be permitted to put his own construction on what the notice contained.

By the COURT.—He may give his best recol-



(Testimony of George L. Gates.)

lection of what it contained. (Plaintiff excepts to ruling.)

A. The location notice claimed 1320 feet I think was claimed [131—109] on the notice, up stream, for mining purposes and 330 feet on each side of the two center end posts and stated that I made this location on the 6th previous to the staking of the ground; that the claim is situated on Big Eldoraro, as Number Two, a tributary of Wilson Creek and that it is staked by power of attorney for Mr. Purdy.

Q. Did you hear the notice as read by Judge Tucker and Mr. Ford here in the court room to-day?

A. No, I didn't hear it.

Q. How was the notice signed?

A. I signed the notice as attorney for Mr. Purdy.

Q. State how you signed the notice?

By the COURT.—Did you write Mr. Purdy's name on it and then yours as attorney?

A. Yes, I wrote Mr. Purdy's name as locator and my name as attorney for Purdy.

Q. And that was dated the 6th?

A. That was dated the 6th, yes.

Q. That was also included in it?      A. Yes, sir.

Q. Was that written in lead pencil?      A. Yes.

Q. What did you do after July 6th, how were you occupied?

A. I was working for Mr. Nelson and Mr. James on Little Eldorado.

Q. Until what time?

A. I was working until about the 20th of July, working on their claim on Little Eldorado.

(Testimony of George L. Gates.)

Q. At the time your arrival in the Shushana, about June 26th, was there a mining recorder in that district?   A. No, sir. [132—110]

Q. Do you know H. E. Morgan?

A. Yes, I know him.

Q. He was later appointed United States Commissioner for that district?   A. Yes.

Q. Do you know what time Morgan arrived in the diggings?   A. No, not the exact date.

Q. What is your best recollection?

A. I think he must have arrived there some time about—between the 20th and 25th of July.

Q. You know a certain one, Frank W. Purdy?

A. Yes, sir.

Q. How long have you known Mr. Purdy?

A. I have known him about twelve years.

Q. Where does Purdy reside?

A. He resides at Forty Mile.

Q. What is his occupation?

A. He is clerk in a store at Forty Mile.

Q. For whom?   A. For the N. C. Company.

Q. That is a mercantile company?

A. Navigation and Commercial Company.

Q. An American corporation?   A. Yes, sir.

Q. Do you know the citizenship of Mr. Purdy?

A. Well, he told me that he was a native of the State of Massachusetts.

Q. What relations have existed between you and Mr. Purdy?   A. In what way?

Q. In a business way—have you ever been partners? [133—111]

(Testimony of George L. Gates.)

A. Yes, we have been partners in some mining deals.

Q. How long has your connection with him existed?

A. I made an arrangement to be in partners with Purdy—I entered into a partnership arrangement with Purdy last spring previous to coming on this trip up here.

Q. What was that arrangement?

Mr. DONOHUE.—We object as incompetent, irrelevant and immaterial and having no bearing on this issue.

Objection sustained—defendant allowed an exception.

Q. State whether, prior to your departure from Forty Miles, Mr. Purdy executed and delivered to you a power of attorney.

Mr. DONOHUE.—We object to that question on the ground that it is not the best evidence—the power of attorney if executed will speak for itself.

Mr. FINNEGAN.—To locate mining claims in Alaska?

By the COURT.—With that addition he may answer.

Plaintiff allowed an exception to the ruling.

A. He did.

Q. Was that power of attorney acknowledged?

Mr. RITCHIE.—We object—we want the power of attorney itself.

Q. Was the power of attorney in writing?

A. Yes, sir.

(Testimony of George L. Gates.)

Q. Was it acknowledged before a notary public?

Mr. RITCHIE.—We object to any description of this power of attorney until there is an explanation of its absence.

By the COURT.—I think you had better, in view of this objection, account for the power of attorney, why you haven't it, etc.

(Last question withdrawn.)

Q. What did you do with the power of attorney?

A. I brought it along with me. [134—112]

Q. Where did you first take it?

A. Where did I receive it from Purdy?

Q. Yes. A. In Forty Mile.

Q. Where did you then take it?

A. I brought it with me up to the Shushana—took it to Dawson with me first.

Q. What did you do with it in Dawson?

A. Took it to the American Consul.

Q. Who is the American Consul?

A. Mr. Cole.

Q. What did you then do with it?

Mr. RITCHIE.—We object to that; if they want to show the acknowledgment and proper execution of this power of attorney they should produce it.

By the COURT.—The question is open to objection—it may call for an answer that is not intended; you should either produce the power of attorney if you desire to use it as evidence or account for its absence.

Q. On your arrival in the Shushana, did you have that power of attorney in your possession?

(Testimony of George L. Gates.)

A. Yes, sir.

Q. Did you have it in your possession on the 6th day of July, 1913?     A. Yes, sir.

Q. What did you do with the power of attorney after the 6th of July?

A. After the 6th I kept it in my possession until about the 20th of July and then I left it with Mr. McKinney; I was going to make a trip for Mr. Nelson and James over near the [135—113] boundary line and I left it with McKinney there.

Q. For what purpose?

A. To be recorded with the recorder when his office was established.

Q. Was there a recording office established there at that time by Morgan?

A. No, not at the time I left.

Q. Was the power of attorney ever returned to you?     A. Yes, sir.

Q. About what time?

A. McKinney returned it to me when I came back.

Q. When was that?

A. I think it was about the 22d or 23d of July; no, it was the 7th of August I returned.

Q. How long after that did you have the power of attorney in your possession?

A. I had it in my possession until I took it with me when I went back to Forty Mile and Dawson.

Q. When was that?

A. That was in November I went to Dawson and about the first part of January I went to Forty Mile and took it among other papers down to Mr. Purdy



(Testimony of George L. Gates.)

in regard to this suit.

Q. Did you leave the power of attorney with Mr. Purdy?

Mr. RITCHIE.—We object to anything further along this line—the plaintiff contends that they have no right to introduce in evidence anything regarding the power of attorney but the record; let them produce the record and show the power of attorney.

By the COURT.—The objection will be overruled; I am waiting for counsel to get around either to introduce the power of attorney or explain why he cannot. [136—114]

Mr. RITCHIE.—We claim we are bound by nothing except the record.

By the COURT.—Suppose it was duly recorded, every word of it and it was a full and valid power of attorney, wouldn't the original be admissible?

Mr. RITCHIE.—I think it would, with the proper endorsement on it.

Plaintiff allowed an exception to the ruling.

A. I don't think I did—I don't think I left it with him.

Q. Where is the power of attorney now?

A. I don't know.

Q. Can you explain to the jury why it is that you cannot produce it now?

A. Well, for the simple fact that I have lost the power of attorney and can't find it in any of my papers.

Q. When did you last see it—when did you first miss it?

(Testimony of George L. Gates.)

A. I missed it first here, after I arrived in Cordova.

Q. When did you last see it to the best of your recollection?

A. Well, I feel positive I seen it here after I came here to Cordova in the hotel.

Q. At the time you last saw the power of attorney was there any endorsement on the back thereof?

Mr. DONOHOE.—We object; the power of attorney speaks for itself and the endorsement thereon.

By the COURT.—Yes, that is part of the contents.

Mr. FINNEGAN.—The witness has shown it is lost—I will ask him—

Q. Have you a copy of that power of attorney?

A. No, sir, I have not.

Q. Have you made any search for the power of attorney?

A. I have been looking for it every day since I have been here. [137—115]

Q. To what extent have you searched for it?

A. I have searched through all my papers, all my clothing, searched my room, made enquiry of the different parties that were with me if they had seen anything of it. I have made enquiries of all the parties that were with me and looked through McKinney's papers and clothing and made every effort possible to find it.

Q. Is there any other act you have performed?

A. I telegraphed to Purdy asking if he had it in his possession—there might be a possibility that I was mistaken about bringing it with me and he an-

(Testimony of George L. Gates.)

swers that he is positive I brought it along.

Q. Do you know what that paper is? (Handing witness telegram.)

A. That is a copy of the telegram I sent to Mr. Purdy.

(It is marked for identification Defts. Exhibit 1.)

Q. State what that paper is? (Handing witness another telegram.)

A. That is the answer I received from Purdy.

Q. In response to your telegram? A. Yes, sir.

(It is marked for identification Defts. Exhibit 2.)

Mr. LEEHEY.—We offer these telegrams in evidence.

Mr. DONOHUE.—We object to the introduction of these two telegrams in evidence on the ground that they are incompetent, irrelevant and immaterial and do not tend to establish any issue raised by the pleadings in this case.

Objection overruled—plaintiff allowed an exception.

They are marked Defts. Exhibit 1 and 2, read to the Jury by Mr. Finnegan; copies are attached hereto and made a part hereof.

Q. You have stated that you have no copy of that power of attorney? [138—116] A. No, sir.

Q. Did you ever read the power of attorney?

A. Yes, sir.

Q. Do you know its contents fully?

A. Yes, I think I do.

Q. State the contents.

Mr. DONOHUE.—We object to that question on

the ground that in order to introduce the power of attorney in this case authorizing this witness to locate mining claims, the power of attorney must be in writing, duly acknowledged and recorded and without being recorded, it cannot be introduced in evidence and the record is the best evidence; on the further ground that the defendant has pleaded in his amended answer that the power of attorney under which Mr. Gates was acting was duly recorded in the records of the White River recording precinct at page 280 of Volume One of said records and as those records are now here present in Cordova and in this court in the custody of the clerk of the court, we demand that they prove the power of attorney by the record as it appears and the record is the best evidence in this case.

Mr. LEEHEY.—I am going to offer in evidence pages 278, 279 and 280 of the records of the White River recording precinct and in accordance with the agreement we have heretofore had with counsel, we have had these copies certified by the clerk.

By the COURT.—These are the pages on which it is claimed this power of attorney was recorded?

Mr. LEEHEY.—Yes, and I offer the preceding pages; beginning on [139—117] page 278, there are powers of attorney and they are numbered 1, 2, 3, 4, 5 down, and I offer all of page 280, which includes Number 11. This particular power of attorney is Number 9.

Mr. DONOHOE.—To which offer plaintiff objects; we object to the introduction of pages 278 and 279

and all that part of 280 excepting the instrument marked Number 9 on the ground that the same is incompetent, irrelevant and immaterial and has no bearing on this case. We object further to the introduction of the instrument marked No. 9 on page 280 on the grounds that it does not show from the record that it is a power of attorney or what nature of instrument it is; it does not show that it acknowledged before any one and is wholly incompetent and inadmissible in this case, because it shows absolutely nothing.

Mr. LEEHEY.—The objection made by counsel is further reason for introducing the whole three pages because the pages start off with the caption Powers of Attorney and are consecutively numbered 1, 2, 3 down; my only reason for introducing Number 11 is to offer the full three pages.

By the COURT.—Now, you have got two matters, two objections, at the same time. I have considered the brief and authorities you have submitted and have allowed testimony to show it was lost. You do not contend against that?

Mr. DONOHUE.—No, we do not contend against the proposition that it is lost but we do contend seriously that the instrument must be recorded to be of any validity in this case; generally they might be permitted to introduce oral evidence of an instrument that has been lost—that is not our position here. Our position is, unless his power of attorney is recorded [140—118] before intervening rights, it is absolutely worthless as conferring any power upon



the attorney in fact to proceed to locate a claim.

WHEREUPON court adjourned until to-morrow (Thursday) April 2, 1914, at 10 o'clock A. M.

**Proceedings Had Relative to Admission of  
Testimony as to Power of Attorney.**

Thursday, April 2, 1914—Morning Session.

Mr. RITCHIE.—In this power of attorney matter, before Your Honor renders your decision, I desire to file the following formal objection to the admission of oral testimony as to the original of alleged power of attorney from Purdy to Gates:

Plaintiff objects to the introduction of parol testimony concerning the alleged original power of attorney from defendant to G. L. Gates authorizing Gates to locate claims in Alaska for defendant, on the following grounds:

1.

That the original document is the best evidence and no sufficient showing of its loss or of diligence to produce it has been made.

2.

It is admitted by defendant that said claimed power of attorney was not filed for record in any precinct of the Third judicial division of Alaska prior to the attempted location of the ground in controversy herein as claimed by defendant.

3.

The only power of attorney pleaded by defendant is the one recorded in volume 1, page 280 of the records of White River precinct; no impeachment of the records of White River precinct is pleaded by defend-

ant; therefore no testimony is admissible to impeach said records or to show the existence [141—119] of another and different power of attorney.

## 4.

The testimony of witnesses as to said power of attorney is admitted to be offered after they have recently examined an alleged copy, not authenticated or proven in any way to be a copy, and their testimony is therefore not from their individual recollection.

**[Opinion Relative to Introduction in Evidence of  
Power of Attorney.]**

By the COURT.—Section 129b., Compiled Laws of Alaska, enacted August 1st, 1912, provides:

“That no person all hereafter locate any placer mining claim in Alaska as attorney for another unless he is duly authorized thereto by a power of attorney, in writing, duly acknowledged and recorded in any recorder’s office in the judicial division where the location is made.”

I had occasion to construe this section in the recent case of Likaits vs. Johnson, and there held that the act of recording the power of attorney was one of the acts of location, and that it is immaterial in what order the several acts of location are performed, provided they are performed before the rights of another intervene.

In this case defendant Purdy claims to have given his power of attorney in writing, duly acknowledged, to one Gates on May 31st, 1913. Gates claims that he made a location on a placer claim for Purdy, under said power of attorney, on July 6th, 1913, and that he

made discovery, marked the boundaries of the claim, and on July 27th, 1913, filed his location certificate with the recorder at Shushana (or White River Precinct) and on July 29th filed said power of attorney with said recorder. On the trial of this case the witness Gates claims that he has lost said original power of attorney and testifies that he has made diligent search therefor, giving details of where and when and how he made search, and cannot find it. [142—120]

Had the power of attorney been properly recorded by the recorder in said precinct, said record would have been offered and received as proof thereof. However said recorder, having just assumed his office, and being unfamiliar with the duties thereof, and being in a remote and inaccessible region in the far interior of Alaska, evidently proceeded on the theory that a mere abstract of the documents filed for record with him, was sufficient. Accordingly in this case he made the following entry in Book 1, at page 280:

“July 29, 1913.

Frank W. Purdy to G. L. Gates.

Sworn to before R. McDonald of Forty Mile.

JAS. McLEOD.

May 31st, 1913.

Recorded at 55 M. past 6 A. M., July 29, 1913, by request W. E. McKinney.

(Sgn.) H. E. MORGAN,  
H. H. Waller, Dep.”

Defendant offers in evidence this record, together with the page immediately preceding and the page immediately following for the purpose of illustrating the method of said recorder in making said records or

abstracts thereof, and also offers to prove by the oral evidence of the witness Gates, the contents of said power of attorney claimed to have been lost. (Defendant also claims to be able to prove the same facts by witness McKinney, who received the power of attorney from Gates, and gave it to the recorder to be recorded.)

Under the system in force in Alaska, whereby U. S. Commissioners and ex-officio recorders receive fees only, in remote places it is exceedingly difficult to get competent and well qualified officers to fill such positions, where the fees may not afford even a living, and the methods of recording are often crude, as appears was the case here. [143—121]

While there is a conflict in the authorities, there is abundant authority to support the proposition that when one has filed an instrument for record with the proper officer, his duty ceases. See *Shepard vs. Murphy*, 58 Pac. 589.

“In the absence of any statute requiring it, a power of attorney need not be acknowledged, or recorded although as matter of proof of authority the power may be and usually is recorded with any recorded instrument which has been executed under it. \* \* \* As the purpose of requiring acknowledgment and record is thereby to give notice to third persons, failure to record the power of attorney even when recording is required by law, will not invalidate the agent's acts thereunder except as to creditors and subsequent purchasers without notice, unless the statute makes record-

ing a prerequisite to authority to act, or provides that unrecorded instruments shall be absolutely void." 31 Cyc. 1231.

Counsel for plaintiff suggests that as plaintiff does not take the interest claimed by him by descent, he in law is a purchaser, but can it be said that he is a purchaser "without notice"? Surely not, for the staking on the ground, the notice of defendant posted on the ground, every fact and circumstance in this case points conclusively to the fact that the plaintiff had actual notice that the ground he attempted to locate was already located and claimed by another, who signed the location as attorney in fact for his principal.

The purpose of this Act of August 1st, 1912, I am satisfied was primarily to limit the number of locations that could be made to two, each calendar month. It was not intended in my opinion that the recording of the power of attorney was intended primarily to give notice to one seeking to make a location of unappropriated and unclaimed public mineral land.

That notice, in most cases, and particularly in this case, was given to the subsequent locator, the plaintiff [144—122] here, by the actual stakings or markings on the ground. The plaintiff testifies that he did not even look at the records; did not make any attempt to find if any location certificate or power of attorney had been filed or recorded by defendant, but that he did find the ground staked and defendant's location notice on the ground, but, as plaintiff claims, giving a misdescription of the claim. Had he have done so, he would have found at least



this abstract of the power of attorney, which would have advised him that such an instrument had been filed by defendant.

Had the author of this Act of August 1st, 1912, intended that the recording of the power of attorney was for the sole or primary purpose of giving notice to a subsequent locator, he, Hon. James Wickersham, long one of the district judges in Alaska, and thoroughly familiar with the needs and peculiar conditions prevailing in this territory, would not have been satisfied with the provision that such power of attorney might be recorded anywhere in the judicial division wherein the location was made.

In this, the Third Judicial Division, such recording might literally have been done at a point over one thousand miles distant from the place where a placer location could be made thereunder, and of what avail, as a matter of notice, would such recording be?

I feel satisfied that the record made by the recorder, Morgan, of this power of attorney, defective though it be, ought to be admitted in evidence. That the defendant in good faith filed it for record and paid the recording fee, and had a right to rely upon the recorder performing his duty in recording it properly. To hold otherwise would be virtually to hold the location of defendant void, regardless [145—123] of the fact that he may have made a valuable discovery, properly marked his boundaries on the ground, and otherwise complied with the law.

I am also satisfied that the defendant has met the requirements of the law in his showing of diligence

in searching for the lost power of attorney, and should be permitted to give oral evidence of its contents. I am strengthened in this opinion by reason of the fact that the defendant made an application for a continuance in this case for the purpose of making further search for this lost document; and upon the Court suggesting to counsel for plaintiff that terms might be imposed to indemnify plaintiff and his witnesses for loss of time and expense of delay in such continuance was granted, they did not meet such suggestion further than to set out in an affidavit that plaintiff would be damaged by such delay in more than Three Thousand Dollars.

To reject the evidence thus offered by defendant would practically work a forfeiture of his mining claim, if it be sufficient in other respects, and so resting upon that highly useful and salutary principle that forfeitures are odious in the law, the courts will not resolve a doubt, either by law or fact, in favor of a forfeiture of property rights.

I am compelled to overrule the objection to the introduction of the evidence so offered by defendant.

To which ruling of the Court counsel for plaintiff is allowed an exception.

Mr. DONOHOE.—In the matter of the offer of this exhibit, being a transcript of certain pages of the records of the White River precinct we object on the ground that it is irrelevant and immaterial testimony and that it contains many matters having no relation to this case; that it is on unfair [146—124] transcription from the records, of Volume One of the records of the White River recording

precinct, in this—it sets forth, commencing on page 278 and ending on page 280, what purports to be a transcript of the record. An examination of the record shows that from page 220 to page 270, being pages preceding the pages of the record from which this exhibit is taken, that powers of attorney are recorded on each and every one of those pages, duly spread in full upon the minutes in this book, duly acknowledged and the acknowledgement spread thereon, and bearing an imprint of the notarial seal and we submit if we are going to introduce anything else by way of showing how the records were kept, that pages from 220 to 270 inclusive be added to the exhibit. \* \* \* If the whole book goes in I have no objection to it, as illustrating the method or recording. That, added to the objections made last night to the introduction of this exhibit I think covers our position.

Mr. FINNEGAN.—We would be glad to have the whole book admitted.

By the COURT.—You can save a great deal of unnecessary expense and labor if you will agree on such portions as illustrate the method used; sometimes the recorder extended the documents at length, other times he made an abstract. \* \* \* If counsel things it important to show that some documents were recorded at length, you will be permitted to do so.

Mr. RITCHIE.—It may be that we can agree on what is essential in order to show the method of keeping this book from the inception.

By the COURT.—If you cannot agree on such

pages as will illustrate this matter fairly, you may put the whole book in. If you want to agree on certain pages of it and offer it in [147—125] evidence, you may do so. The objection to the present offer will be overruled and exception allowed plaintiff.

Mr. DONOHOE.—I want to state my objection to that transcript again—the plaintiff at this time objects to the introduction of Defendant's Exhibit 3 on the ground that it is immaterial and incompetent and does not tend to prove any of the issues in this case; and on the further ground that it is an unfair representation of the method in which powers of attorney were recorded in the White River recording precinct as shown by Volume One of said records.

By the COURT.—The objection will be overruled with the understanding that plaintiff if he desires may offer such other portions or all the balance of said recording book.

Mr. LEEHEY.—To which defendant has no objection.

(Ex. 3 admitted.)

Plaintiff allowed an exception to the ruling.

Mr. RITCHIE.—I want to ask the witness a few questions regarding this power of attorney. (Permission granted.)

Cross-examination by Mr. RITCHIE.

Q. I don't remember when you said you last saw that power of attorney.

A. I am not positive I seen it here in Cordova, but I am under the impression I seen it among my papers

(Testimony of George L. Gates.)

after arriving here; I can swear positively I seen it at Forty Mile.

Q. You saw that power of attorney, I understood from your testimony, after it was recorded by McKinney?     A. Yes, sir.

Q. It was returned to you?     A. Yes, sir.

Q. About when you returned into the district about the 7th of August, or soon after?

A. Yes, sir. [148—126]

Q. You put it among your papers at that time?

A. Yes, sir.

Q. Did you see it again before you left the Shushana district?     A. Yes, I think I did.

Q. Where did you go from the Shushana last fall?

A. I went cross country to the White River and down the White to Dawson.

Q. And where did you spend the early part of the winter?     A. In Dawson.

Q. Did you see the power of attorney while you were there in Dawson?     A. Yes, sir.

Q. About what time did you see it last?

A. I seen it about the first of January, perhaps the 5th of January.

Q. Was it among your papers?     A. Yes, sir.

Q. With other papers referring to the Shushana district?     A. Yes, sir.

Q. Did you keep them all together?

A. Yes, I had them all together when I left Dawson going to Forty Mile.

Q. When was that?



(Testimony of George L. Gates.)

A. That was about the 5th of January.

Q. And when did you go to Forty Mile?

A. About the 7th of January.

Q. How long did you remain at Forty Mile?

A. I remained there about six or seven days.

Q. And where did you go then?

A. I came to Dawson. [149—127]

Q. You went back to Dawson? A. Yes, I did.

Q. Did you see the power of attorney while you were at Forty Mile?

A. Yes, I turned all the papers pertaining to this ground over to Purdy, with some other documents from Mr. Leehey.

Q. And this power of attorney was among them?

A. Yes, sir.

Q. You are sure of that? A. Yes.

Q. When did you leave that country up there to come to Cordova on this trip—when did you leave Forty Mile and Dawson to start for Cordova for this trial? A. I left in February.

Q. Which place did you leave?

A. I left Dawson.

Q. How long before that had you been in Forty Mile? A. I was in Forty Mile in January.

Q. Did you get those papers from Purdy before you started from Forty Mile?

A. He turned over a lot of papers to me, yes, sir.

Q. Did you examine them at that time?

A. I never examined them very carefully, no.

Q. Did you make a list of them?

A. No, no list.

(Testimony of George L. Gates.)

Q. Were those papers that you wanted to bring here for this trial?     A. Yes, sir.

Q. What else was among them besides the power of attorney?

A. Well, there was the records of the location notices. [150—128]

Q. Any other documents or letters?

A. Yes, there was a few other documents; in fact, all the papers pertaining to my other claims.

Q. How did you carry them?

A. I carried them in a bundle with a rubber band around them.

Q. Now, when you put them together and put the rubber band around them, did you notice whether or not the power of attorney was among them?

A. I don't think I examined them carefully, no.

Q. You are certain of that?     A. Yes, sir.

Q. You knew you wanted to use it in evidence here, didn't you?     A. No, I can't say I did.

Q. You didn't know it would be necessary?

A. No.

Q. Did you open that bundle at any time between Forty Mile and Dawson or before reaching Cordova?

A. Yes, at Donjak City on Forty Mile.

Q. What for?

A. To get out some papers for a man that was going to Dawson.

Q. Now, when did you last read that power of attorney?     A. The last time I read it over?

Q. Yes.

A. I glanced over it when I was at Forty Mile.

(Testimony of George L. Gates.)

Q. When you showed it to Mr. Purdy you read it over?    A. Yes, sir.

Q. You never made a copy of that?

A. No, sir.

Q. Do you know of any copy that is in existence?

A. No, sir. [151—129]

Q. Do you know whether anybody ever made a copy?    A. No.

Q. Now, Mr. Leehey has offered here what purports to be a copy of it—who made that, do you know?    A. That copy?

Q. Yes. Do you know who made that copy?

A. I see Mr. Purdy's name to it; I suppose he made it.

Q. Do you know when and where it was made?

A. No, sir.

Q. Do you know at whose request it was made?

A. I suppose it was Mr. Leehey's request.

Q. It was not made at your request?

A. No, sir.

Q. You have gone over that copy somewhat since you came here—you have read it several times.

A. I read it once.

Q. Talked it over with Mr. Leehey and Mr. Finnegan?    A. Yes, sir.

Q. And discussed it, to decide in your opinion whether it is the same document—a copy of the original power of attorney?    A. Yes, sir.

Q. And as the result of these discussions you have satisfied yourself it is?    A. Yes, sir.

Q. Is there anything peculiar about it which re-

(Testimony of George L. Gates.)

minds you of anything in the original, that is, in the wording of it or the signatures to it?

A. No, I don't think that there is.

Q. If you testify to the contents of this power of attorney are you going to testify to the contents of the original or the contents of this copy? [152—

130] A. How is that?

Q. If you testify here to the contents of that power of attorney, are you going to testify to the contents of the original or the contents of this copy?

A. I will testify to the contents of the original as to the best of my knowledge.

Q. The copy is a great deal fresher in your memory than the original? A. Yes, sir.

Q. What makes you so confident it is a copy, an accurate copy—what causes you such confidence that this is an accurate copy?

A. It seems to be very similar to the original

Q. What kind of paper was the original written on? A. Ordinary writing paper I suppose.

Q. Was it in handwriting, with a pen, or typewritten? A. Tyewritten.

Q. All but the signature? A. Yes, sir.

Q. Are there any other valuable papers missing since you left Forty Mile? A. Yes, sir.

Q. What are they? A. Some bills of sale.

Q. Have you any idea how you lost them?

A. I think that they were in the same package with this power of attorney and some other papers.

Q. Have you been reading other powers of attorney, similar to that, since you came here?

(Testimony of George L. Gates.)

A. No, sir. [153—131]

Q. Mr. Doyle has a power of attorney, has he not, Mr. Markley?      A. Yes, sir.

Q. Have you read that?      A. No, sir.

Q. You never saw it?      A. No.

Q. You don't know whether it is similar to the other one or not?      A. No.

Mr. RITCHIE.—We renew our objection—not showing sufficient diligence and the absence of the original has not been properly accounted for and the proper foundation has not been laid for the admission of secondary evidence as to its contents.

Objection overruled; plaintiff allowed an exception.

Direct Examination (Continued) by Mr.

FINNEGAN.

Q. Mr. Gates, can you state the contents of the power of attorney executed by Mr. Purdy on or about the last day of May, 1913, and running to you?

A. Yes, sir.

Q. State it.

Mr. DONOHUE.—We object further on the ground that there is no evidence before the Court at this time to show that the alleged power of attorney was placed upon the record as required by law, previous to the initiation of title by the defendant in this case.

Objection overruled—plaintiff excepts.

Q. State the contents of that power of attorney.

A. It was a power of attorney authorizing me to



(Testimony of George L. Gates.)

stake mining ground in the Territory of Alaska.

[154—132]

Q. Was it acknowledged?

Mr. DONOHUE.—We object to that on the ground that it is leading.

By the COURT.—State everything this power of attorney contained.

Q. Describe it as well as you can, in full.

A. Well, it was a power of attorney authorizing me to take mining ground in the District of Alaska and was acknowledged before a notary at Forty Mile by the name of McLeod and witnessed by Mr. McKinney and Mr. McDonald and had a certificate attached from the Consul at Dawson, with his seal attached, stamped on it, two dollar stamp.

Q. What was the purpose of the consular seal, if you know?

A. I think it was stated that McDonald was duly authorized—I think it was set forth that McDonald was duly authorized to administer oaths and execute documents.

Q. Don't you mean McLeod?

A. Mr. McLeod, I mean, yes.

Q. Where is McLeod now, if you know?

A. He is in Forty Mile.

Q. What official position does he hold, if you know?

Mr. DONOHUE.—We object to that as not the best evidence.

By the COURT.—You mean Forty Mile, Yukon Territory, not in Alaska?

(Testimony of George L. Gates.)

A. Yes, Yukon Territory.

Objection overruled—plaintiff allowed an exception.

A. McLeod is collector of customs at the port of Forty Mile.

Q. Does he hold any other official position?

A. Not that I know of.

Q. Is Mr. McLeod a notary public?

Mr. DONOHOE.—We object as leading.

Objection overruled—plaintiff allowed an exception. [155—133]

A. That is my understanding, yes.

Mr. DONOHOE.—We move to strike the answer as not responsive to the question.

Motion denied—plaintiff excepts.

Q. Who is Mr. McDonald?

A. Mr. McDonald is manager for the N. C. Company at Forty Mile, the mercantile company.

Q. Who is Mr. McKinney?

A. McKinney is a resident of Forty Mile.

Q. What is his occupation? A. Mining.

Q. Is this the same McKinney who is here present in court? A. Yes, sir.

Q. At the time you last remember seeing this document, can you state whether it then contained any endorsement on its back? A. Yes, sir.

Mr. DONOHOE.—We object to that question as he has testified to everything that was in the power of attorney.

Mr. FINNEGAN.—I asked him as to the contents of the power of attorney at the time it was executed

(Testimony of George L. Gates.)

and now I am asking about it at a later date—the last time he saw it.

Q. State what that condition was.

A. Written on the back of it was a statement that it had been filed for record at a certain date.

Q. Where and when?

A. I think it stated it had been filed for record about the 29th of July, or 30th.

Q. Where?

A. In the White River mining district.

Q. By whom? [156—134]

A. By Mr. McKinney.

Q. What else did it contain?

Objected to as leading—objection overruled—plaintiff excepts.

A. It was signed by Mr. Waller, acting recorder.

Q. You mean Mr. Morgan?

A. Morgan was recorder and I think it was signed by Mr. Waller, too, I am not positive.

Q. Did Mr. Waller's endorsement carry with it anything additional, other than his mere name?

A. I don't remember any.

Q. You don't know then whether Mr. Waller signed it as deputy recorder?

Mr. DONOHUE.—We object to that.

By the COURT.—I think the witness is fair; he doesn't quite understand the technical meaning of these matters; he may answer. Plaintiff allowed an exception.

A. I think so, yes.

Q. Do you have any business connections with Mr.

(Testimony of George L. Gates.)

Purdy at this time? A. Yes, sir.

Q. Have you had previously? A. Yes, sir.

Q. What are those connections?

By the COURT.—I think you covered that yesterday.

Q. What I refer to is the present connection you have with Mr. Purdy, if any. A. Yes, I have.

Q. What connection is that?

A. Well, we are interested in these grounds together. [157—135]

Q. In what ground?

A. In the ground I located.

Q. In this ground in question?

A. In this ground in question, yes.

Q. Mr. Purdy is a partner of yours in that ground? A. Yes, sir.

Q. You are interested, then, in this suit with Mr. Purdy as a part owner?

A. Part owner, yes, sir.

Mr. FINNEGAN.—That will be all.

Cross-examination by Mr. DONOHOE.

Q. You were part owner in this land when you left Dawson or Forty Mile to come here to this term of court? A. Yes, sir.

Q. And you don't know whether you had that power of attorney with you when you left or not, do you?

A. No, I couldn't swear positively I had.

Q. Did you make an affidavit for a continuance in which you stated that that power of attorney may have been left in some of your old clothes?

(Testimony of George L. Gates.)

A. How is that?

Q. Didn't you state in your affidavit for a continuance here that you didn't know where that power of attorney was, that it might be in a safe at Forty Mile, it might be in Purdy's possession or it might be in some of your old clothes?

Mr. LEEHEY.—We object to that as unfair—the affidavit is here and he may be referred to anything in the affidavit.

Objection sustained—plaintiff excepts.

Q. When you left to come here you were not particular whether [158—136] you had that power of attorney with you or not?

A. I didn't think it was absolutely necessary to bring it.

Q. You are somewhat familiar with the law known as the Wickersham Act, are you not? A. Yes, sir.

Q. And you knew that you had to be authorized by a power of attorney in order to be qualified to locate a placer claim for another? A. Yes, sir.

Q. And still you did not think it was necessary to bring that with you for this trial?

A. I didn't think it was absolutely necessary, no.

A. And you came here to this trial, to establish that you were the attorney in fact for Mr. Purdy and didn't think it was necessary to have the written evidence of it—is that right?

A. I supposed there was a copy of this on the records here, the power of attorney.

Q. You never presented that power of attorney for record, did you?



(Testimony of George L. Gates.)

A. No, I requested Mr. McKinney to present it.

Q. You never did—you didn't know whether it was ever presented of your own knowledge or not?

A. I see an endorsement on the back of it stating it had been presented.

Q. Do you know that whoever endorsed that on the back had any right to endorse it?

A. I suppose they had—I suppose he was a recorder.

Q. That is all you knew about it—you never inquired to know whether Waller was a deputy recorder or not, did you?      A. Yes, I heard he was.  
[159—137]

Q. Whom did you ask whether Waller was a deputy recorder or not?

A. I see him working in the office and understood he was deputy recorder.

Q. And that is all you knew about whether he was recorder or not?      A. Yes, sir.

Q. And did Doyle accompany you down from the Canadian country on this trip?      A. Yes.

Q. Doyle told you he had his power of attorney with him, didn't he?      A. No, sir.

Q. Now, when you left Forty Mile, without any knowledge of whether you had that power of attorney with you or not, what made you search when you arrived at Cordova?

A. Mr. Leehey told me that it was necessary I should have it and he asked for it.

Q. You have testified to an endorsement on the back of that power of attorney—you have seen this

(Testimony of George L. Gates.)

instrument which I hand you, haven't you, since you arrived in Cordova? (Handing witness paper.)

A. Yes, sir.

Q. That instrument was given to you by Mr. Leehey for the purpose of refreshing your memory, was it not? A. Yes, sir.

Q. This endorsement on the bottom of that endorsement is in Mr. Leehey's handwriting, is it not?

A. I couldn't say—I never read that before.

Q. Never read that endorsement before? [160—138] A. I never read that.

Q. You never read that endorsement?

A. I never read it on this document—I simply read that (indicating).

Q. Why didn't you read the writing? You have testified about an exact copy of that endorsement, haven't you?

A. I testified to the endorsement on the back of the power of attorney.

Q. And what you have testified to is practically word for word with that endorsement, is it not?

A. Similar to that, yes, as I remember.

Q. And after reading this document, your mind became refreshed as to the contents of the power of attorney, did it not?

A. Well, you might say that it did, yes.

Q. It is almost ten months since you read that original power of attorney—you read the power of attorney when it was delivered to you about ten months ago, did you not? A. Yes, sir.

Q. Where were you when you read that—where

(Testimony of George L. Gates.)

were you when you first read the power of attorney?

A. When I first read the power of attorney was when it was given to me at Forty Mile in May.

Q. What date in May?

A. I think it was about the 31st.

Q. You set up in the affidavit it was the 30th?

A. 30th or 31st.

Q. Which day was it, the 30th or 31st?

A. I will not be positive which day it was, it was one or the other.

Q. You read it then, and what occasion did you ever have to read it again? [161—139]

A. I had occasion to read it again when I took it to the consul at Dawson—read it over with him and asked his opinion as to the validity of it.

Q. Are you an American citizen? A. Yes, sir.

Q. Have you a certificate from the American Consul?

A. It had a certificate attached to it from the American Consul.

Q. And you don't know whether that power of attorney was recorded or not, of your own knowledge?

A. The only knowledge I have that it was recorded was the indorsement on the back of it.

Q. Did you ever examine that particular record that is pleaded in the answer of the defendant to be the record of this power of attorney?

A. No, I never examined it.

Q. Never looked at it? A. No, sir.

Q. Did anybody tell you of its contents?

A. No, sir.

(Testimony of George L. Gates.)

Q. You don't know anything about it?

A. No, sir.

Q. Mr. Leehey didn't give you a copy of its contents the last two or three days when discussing this matter?

A. I don't remember his showing it to me at all.

Q. Did he tell you what it was—did he tell you it was a defective record?

A. No, sir, I don't remember his doing so.

Q. He never told you that?

A. No. [162—140]

Q. You discussed the contents of this power of attorney with Mr. Doyle and Mr. McKinney since you have been in town, have you not?

A. I don't know as I have.

Q. You have discussed the contents of that power of attorney with Mr. Doyle and Mr. McKinney, haven't you, since you have been in Cordova?

A. I believe we have talked about it, yes.

Q. And you have discussed it quite thoroughly, have you not?      A. I don't know as we have.

Q. And Doyle and McKinney have from time to time made suggestions to you as to what the contents of that power of attorney were, have they not?

A. No, sir.

Q. Are you sure they have not?

A. Yes, I am sure of that.

Q. Where do you reside, your home?

A. My permanent home is in the State of Oregon.

Q. How long have you resided at Forty Mile?

A. I have been residing in the Forty Mile continu-

(Testimony of George L. Gates.)

ously for the last six years.

Q. You are engaged in business in Forty Mile?

A. Not in Forty Mile City—I have been mining in what we call the Forty Mile country, sometimes one place and sometimes another, prospecting a good deal of the time, different creeks.

Q. When did you arrive in the Shushana region?

A. We arrived there on the evening of the 26th of June.

Q. You were not one of the original discoverers in that country? [163—141] A. No.

Q. And I believe you testified yesterday how you happened to go into that country? Nelson returned there and told you of the strike, when you were in Dawson or Forty Mile—is that correct?

A. Nelson wrote me a letter from Dawson, addressed to Forty Mile.

Q. And then you joined Nelson at Forty Mile?

A. I joined him in Dawson.

Q. And you and Nelson and McKinney traveled back to the country? A. Yes, sir.

Q. Nelson wrote you of the strike?

A. He wrote to me that he found what he considered fair pay there.

Q. On James' claims?

A. He didn't state on James' claim—he didn't state anybody's claim.

Q. You arrived there about the 26th of June?

A. Yes, sir.

Q. Where were you when you made your first location?



(Testimony of George L. Gates.)

A. I made my first location on Bonanza Creek.

Q. What number?     A. Number 12.

Q. When?     A. That was the 29th of June.

Q. Made that in your own name?     A. Yes, sir.

Q. Where were you on the evening of the second of July?     Where were you on the second of July, in the afternoon and evening?

A. In the evening I was at the mouth of Bonanza Creek or Eldorado Creek, at the camp. [164—142]

Q. That is where the James' camp was?

A. Yes.

Q. Where did you go on the morning of the 3d?

A. The morning of the third of July?

Q. Yes.     A. I don't remember.

Q. You are positive you were not on Big Eldorado on the third?     A. Yes, sir.

Q. You are positive you did not locate this claim, Two Below Discovery, on the third?

A. Yes, sir.

Q. And you are as positive of that as of anything you have testified to, that you did not locate Number Two Below Discovery on Big Eldorado on the third day of July?

A. Yes, sir, I am positive I did not locate it that day.

Q. You are positive you were not there on the third day of July—where were you?

A. I think I was around the camp, over there on Eldorado and Bonanza Creeks.

Q. You located this claim on the 6th day of July, did you?     A. Yes, sir.

(Testimony of George L. Gates.)

Q. You are positive of that, are you?

A. Yes, sir.

Q. Who accompanied you over there that day?

A. Mr. McKinney, Mr. Nelson and Mr. Doyle.

Q. Had any of these gentlemen located any claims over there previous to that time?

A. Not to my knowledge.

Q. What was the first claim located by the party?

A. The first claim located was located by Nelson, I think. [165—143]

Q. What claim?

A. I think it was Discovery claim.

Q. On which end of the claim did he place his location notice?

A. I think the location notice was on the upper end.

Q. Who located the next claim, One Below?

A. Mr. McKinney located that.

Q. Where did he put his location notice?

A. I am not positive I think, though, he put it on the upper end.

Q. Did Nelson stake his claim when he located it?

A. Yes, sir.

Q. Put out the corner stakes? A. Yes.

Q. And McKinney did the same? A. Yes, sir.

Q. And then you located Number Two Below, did you? A. Yes.

Q. Which is the ground in controversy—is that right? A. I located Number Two, yes.

Q. After McKinney had located Number One—is that right?

(Testimony of George L. Gates.)

A. He hadn't completed his location when I staked mine.

Q. Where was he when you started to locate Number Two?

A. He was at the lower center and stake.

Q. McKinney was?     A. Yes, sir.

Q. What was he doing?

A. He was building a monument and preparing stakes.

Q. He had put up his notice before he came down—he had already put up his notice on the upper end?

A. I am not positive but I think so, yes. [166—144]

Q. And he was preparing his corner posts?

A. No.

Q. When you started to locate Number Two he was preparing to locate his monument and preparing his corner stakes?

A. No, he was building a monument at the center end posts.

Q. You said something about preparing corner stakes—what was he doing about that?

A. He was cutting some willows.

Q. He had put in the two corner stakes above at the upper end, had he?

A. I don't know that he had.

Q. You don't know?

A. No, I don't think so.

Q. Where did you go from there?

A. I stepped down from his monument that he was putting up there; he said that was the end of the

(Testimony of George L. Gates.)

claim and I paced down-stream to get the proper length for Number Two.

Q. What did you do at the upper end before you went down to the lower end—what did you do on the upper end of Number Two first—what did you do at the upper end of Number Two when you first came upon that piece of ground?

A. I think we were helping Nelson about a monument there.

Q. You were helping Nelson put up a monument there? A. I think so, yes.

Q. And then you went down to the lower end?

A. I went down to the lower end.

Q. What did you do at that lower end?

A. I stepped down and built a monument.

Q. On which side of the creek did you put that monument?

A. I am not positive about which side of the creek but I think it was on the left limit of the creek.  
[167—145]

Q. The lower end monument? A. Yes, sir.

Q. Where was your upper end monument?

A. The upper end monument was built in connection with McKinney's, a common monument.

Q. And then you put up your stakes, did you?

A. Yes, sir.

Q. What stakes did you put up first?

A. I put up the lower center end stakes.

Q. What kind of a stake did you put there?

A. It wasn't a stake, it was a monument of stone.

Q. How many stones?

(Testimony of George L. Gates.)

A. Well, there was quite a few; it was a monument about two feet at the base and about perhaps two feet and a half high.

Q. What corner stakes did you put out first?

A. The corner stake I put out first was the lower corner stake on the left limit.

Q. What next—which one did you put out?

A. I put out the upper corner stake on the right limit.

Q. Now, Number Three had not been located up to this time, had it?     A. No.

Q. And you first put out the lower corner stake on the left limit and then the lower corner stake on the right limit—is that right?     A. No.

Q. The first stake you put out was the lower corner stake on the left limit.     A. Yes, sir.

Q. What next did you put out?

A. I put out next the upper corner stake on the left limit. [168—146]

Q. And then what stake?

A. Then I came and put the center end stake on the upper end.

Q. What did you do to put the center end stake on the upper end?

A. I whittled off a piece of willow stake, about three feet long and marked it, Upper center end stake Claim Number 2 Big Eldorado.

Q. And where did you put it?

A. I set it on this monument of stone.

Q. Now, when you were at your upper stake on the left limit—what number was that, what corner



(Testimony of George L. Gates.)

did you call that?

A. I called that the upper corner stake, left limit, Claim No. 2.

Q. That was the marking you put on it?

A. Yes, sir.

Q. Is that all the markings that was on that stake?

A. No, I marked on the stake, Upper corner stake, left limit, Claim No. 2 Big Eldorado.

Q. That is all that was marked on the stake?

A. That is all I marked on it, yes.

Q. Where did you go next, after you put up the center end stake?

A. I went over to the upper stake on the left limit.

Q. What did you mark on that?

A. I marked that the same as the other stakes.

Q. Was that all the markings on that stake?

A. That was all I put on, yes.

Q. When did you write your notice of location?

A. I wrote it there.

Q. Is it not a fact that those notices of location were written the night before over on Bonanza Creek and taken over there already written?  
[169—147]

A. I think some of them were and some were not.

Q. Who wrote those notices?

A. I don't remember just who did write them.

Q. They were most all in your handwriting, or were they all in your handwriting?

A. No, most of the location notices were written by Mr. James or Mr. Taylor, I think.

Q. And they were written in advance and taken

(Testimony of George L. Gates.)

over by your party to be put up?

A. Some of them were, yes, I think.

Q. Most of them were, were they not?

A. I don't remember just how many.

Q. The notice that was on Number Two was so written, was it not?      A. No, sir.

Q. Do you mean to say you wrote that notice on the ground?

A. There was part of it was written on the board and I filled it out on the ground.

Q. You filled it out?      A. Yes, sir.

Q. What did you fill it out with?

A. A lead pencil.

Q. Indelible?

A. I couldn't say whether it was an indelible or not.

Q. What part of it did you fill out?

A. I filled out the part giving the dates and the description of the ground and the names.

Q. Did anybody sign that as witnesses?

A. I don't remember whether any one signed it or not.

Q. Now, you saw McKinney locate Number Three Below that day, didn't you?

A. Yes, sir. [170—148]

Q. Where did McKinney put his location notice for Number Three Below, which end of the claim?

A. He put it on the upper end of the claim.

Q. And you saw Mr. Doyle locate his claim, Number Four Below, didn't you?

A. Yes, I was down there.

(Testimony of George L. Gates.)

Q. On which end of the claim did he put his notice?

A. I am not sure which end he did put it on.

Q. It could not have been on the lower end, could it? That goes into a canyon? Refreshing your memory as to the situation there, knowing there was a canyon there, can you state where that notice was?

A. I can't state positively but I believe his notice was on the lower end of the claim.

Q. What makes you believe that?

A. I think I seen it there.

Q. Were you there when he erected it?

Mr. LEEHEY.—We object to any further cross-examination concerning claim Number 4 Below Discovery; that claim is in litigation and to be tried here shortly—it is too remote.

Mr. DONOHUE.—The purpose of it is to show that all those claims excepting this particular one, the notices were all on the upper end—it is a circumstance.

Objection sustained. Plaintiff allowed an exception.

Q. Now, you saw Mr. Doyle locate that claim on the 6th?

A. I was there on the claim—I wasn't right by him when he was putting up his notice.

Q. Had there been any of these claims I have questioned you about located previous to your going there on the 6th? A. No, sir. [171—149]

Q. It was vacant ground on the 6th day of July?

A. Yes, sir.

(Testimony of George L. Gates.)

Q. There was none of those claims located?

A. None that I know of.

Q. Now, I would again like to ask you where you were on the 3d day of July—I haven't got a satisfactory answer to that yet.

A. I can't swear positively as to where I was on the third of July but I think I was on Little Eldorado, at the camp.

Q. Did you locate any claims that day?

A. On the 3d of July?

Q. Yes.      A. No.

Q. I will ask you, Mr. Gates, if it is not a fact that McKinney and Doyle and probably Nelson went over there to Big Eldorado on the third day of July, you not being present, and made these locations?

A. No, sir, I don't think they did.

Q. That is the best answer you can give on that question, is it?

A. I know they did not—I am positive that they did not.

Q. Now, Mr. Doyle filed a location notice for No. 4 Below Discovery in which he claims to have discovered and located same on the third day of July—would that changet your opinion any?

A. How is that?

Q. If Mr. Doyle has filed for record a notice of location wherein he sets out that he located No. 4 Below Discovery on Big Eldorado on the third day of July, would that change your opinion as to who located those claims when they were located?

A. No, sir. [172—150]

(Testimony of George L. Gates.)

Q. It would not?     A. No, sir.

Q. You are just as positive of that as you are to the contents of that power of attorney, are you?

A. Repeat that, please.

Q. I say you are just as positive regarding the location of those claims as you are to the contents of that power of attorney?     A. Yes, sir.

Q. And if you are mistaken in one you might be mistaken in both, might you not?

A. I don't know.

Q. Now, when you put up the corner posts at the lower end of your claim, right limit, what markings were there at that time?

A. When I put up my corner post?

Q. Yes, on the right limit of Number Two?

A. What markings were there?     There was none.

Q. There was no stake there at all?     A. No.

Q. When you put up the stakes at the upper corner on the right limit, was there any stakes there?

A. No, sir.

Q. When you put the stake up at the upper left

Q. When you put up the stake at the upper corner limit, was there any writings there?

A. No, sir, I didn't see any.

Q. And when you put your stake up at the lower end of the left limit, were there any markings there, stakes or otherwise?     A. No.

Q. Then you located this claim and when you located it the adjoining [173—151] claims on each side of you were not located?     A. No, sir.

Q. And you did that work actually yourself, the



(Testimony of George L. Gates.)

staking?     A. Yes, sir.

Q. And building the monument?     A. Yes.

Q. Now, you afterwards caused a notice of location to be recorded for this claim, No. 2 Below, did you not?     A. Yes, sir.

Q. Did you see that notice?

A. The notice of location?

Q. Yes. That was recorded?     A. Yes, sir.

Q. You know the contents of it?

A. Fairly well; it was a copy similar to the location notice posted on the claim.

Q. You have seen a copy of it from the record, haven't you?

A. I had a copy of it from the record.

Q. You got a copy of it from the record?

A. I had, but I haven't it now.

Q. You saw that notice before it was recorded—you prepared the notice, did you not?

A. Yes, I think so.

Q. You are positive you put your location notice on the lower end of the claim, are you?

A. I am positive I put the location notice on the lower end.

Q. Can you explain why you did that and the other claimants all put them on the upper end?

A. The only reason is that I stepped, measured the claim, from the upper end down and had the notice with me.

Q. Didn't all the boys do that, start in at Discovery and go [174—152] down the creek—Didn't they all put up their monument and notice first and

(Testimony of George L. Gates.)

then go down to the lower end of the claim. Didn't they all put up their notice of location and corner stakes and go down and put up their stakes there?

A. I think they did, most of them.

Q. That was done in all cases but yours?

A. I am not sure Doyle did that, but I think the rest of them did.

Q. When you prepared this notice of location for filing, you saw that it was correct, did you not?

A. I didn't examine it very carefully, no.

Q. You prepared it anyway, didn't you?

A. Yes.

Q. Examine that paper, please; that notice calls for 1320 ft. down the stream, does it not? (Handing witness paper.) A. Yes, sir.

Q. And still when you prepared that notice, you placed the notice at the lower end of the claim, is that right? A. Yes, sir.

Mr. DONOHUE.—We offer in evidence this certified copy of the location notice for the purpose of assisting the jury in arriving at where the notice of location was really placed upon the ground at the time the location was made.

Mr. LEEHEY.—We object to the introduction of that in cross-examination, but we offer a certified copy, the same certified copy, in evidence as part of our case—I would rather have it in the record that way.

Mr. DONOHUE.—I don't care whose copy is used—if this copy corresponds with mine, we have no objection to it.

(Testimony of George L. Gates.)

(It is admitted as Defts. Exhibit 4 and read to the Jury by [175—153] Mr. Ritchie. Copy is attached hereto and made a part hereof.)

Q. You heard that this ground had been relocated, did you not?     A. Yes, sir.

Q. While you were in the Shushana district?

A. Yes, sir.

Q. You didn't go over there to see about it, did you?     A. No.

Q. You sent McKinney over?     A. Yes, sir.

Q. Is McKinney interested in this ground too?

A. No, sir.

Q. He is not interested?     A. No.

Q. McKinney has no interest in the ground at all?

A. Not in that particular ground, no.

Q. That is just between you and Purdy?

A. Yes.

Q. You are positive you put up those corner stakes and not McKinney?     A. Yes, sir.

Q. You testified yesterday that you were working for Mr. James—when did you go to work for Mr. James?

A. I went to work for Mr. James about the 7th or 8th of July.

Q. Were you working in the cut, pick and shovel work?     A. Yes, sir.

Q. How long did you work there?

A. I worked there until about the 20th of July.

Q. Then you went to Steel Creek, did you?

A. No, I went to Beaver Creek.

(Testimony of George L. Gates.)

Q. Was that the first trip you made away from there after you first came? [176—154]

A. Yes.

Q. Then you were not in the Shushana region on the 27th of July? A. No, sir.

Q. You prepared this notice of location for record before you left, did you? A. Yes, sir.

Q. Signed the notice of location yourself?

A. Yes, I think so.

Q. You are positive of that, though, are you?

A. I am not positive whether I signed it or just wrote a copy of it.

Q. McKinney might have signed it?

A. Yes, he might have signed it.

Q. Both on the ground and on the one that was recorded—both the notice posted on the ground and the one that was recorded?

A. No, the notice posted on the ground I signed myself.

Q. You signed that yourself? A. Yes, sir.

Q. You are a man of considerable means, are you not, considerable property interests?

A. Not any too much, no.

Q. You are worth fifty or sixty thousand dollars?

A. Hardly.

Mr. DONOHOE.—That's all.

Mr. RITCHIE.—At this time I want to make a motion for the sake of the record to strike out all that part of the testimony regarding the contents of the alleged power of attorney upon the ground that both in his answers to the direct examination

(Testimony of George L. Gates.)

and cross-examination he showed that he had repeatedly [177—155] refreshed his recollection by consultation and reading and hearing read this copy and the motion is directed to the fact that his testimony therefore is not based upon the original document so much as it is upon the copy which is not produced here as a correct copy and is not shown by any evidence at all to be a copy.

Motion denied—plaintiff allowed an exception.

Mr. DONOHOE.—I want to ask the witness a few more questions.

Q. When were you last upon the ground in controversy, No. 2 Below on Big Eldorado Creek?

A. When I staked it.

Q. You never went back to it?      A. No, sir.

Q. You were there just on the 6th day of July, you claim?      A. Yes, sir.

Q. Never was there before or since?

A. No, sir.

Mr. DONOHOE.—That's all.

(By Mr. FINNEGAN.)

Q. Who did the annual labor work on that claim?

A. Mr. McKinney, Mr. Schultz, Mr. Kingwall and Mr. Atkinson.

Q. At whose request was it performed?

A. My request. It was performed in September.

Q. On the 6th day of July, how many men were in the Shushana region, if you know?

A. I think about six men.

Q. In the whole region?

A. Yes, as far as I know.



(Testimony of George L. Gates.)

Q. When did you leave the Shushana, in the fall?  
[178—156]

A. The 12th of October.

Q. How many claims did you locate as agent for Mr. Purdy or for others?

A. I located this Number 2 and a fraction on Bonanza in Mr. Purdy's name.

Q. Two claims, then, is the number of claims you located as agent or attorney for any other parties?

A. Yes, sir.

Q. Relative to the location of the claim No. 2 were you assisted by your companions in any of the location work? I will put it this way—did the men who accompanied you on that day assist you in any part of the location of the claim?

A. McKinney assisted me in building the center end monument, yes.

Q. Where did you obtain the stakes?

A. We obtained the stakes down the creek below, brought them up there.

Q. How far down?

A. I think about a quarter of a mile.

Q. Did you bring the stakes or did others assist you?

A. We all brought some stakes—I brought some and other parties brought some stakes.

(By Mr. DONOHOE.)

Q. You say there were six men in the whole Shushana region on the 6th day of July, is that right?

A. There was six men in that immediate neighborhood,—that is all I know of.

(Testimony of George L. Gates.)

Q. There were six men of your people from Dawson and Forty Mile? [179—157] A. Yes, sir.

Q. Carl Whitten was in there at that time?

A. Not at that time.

Q. He had gone to Copper Centre to record his notices, had he not?

Mr. LEEHEY.—We object as calling for a conclusion.

Objection sustained; plaintiff excepts.

Q. These men were yourself, James, Nelson, Doyle, McKinney and probably Johnson?

A. No, sir, Johnson was not there.

Q. I named the others, didn't I? A. Yes.

Q. You had been in the district how long on the 6th of July?

A. We arrived there on the 26th of June.

Q. And you all camped at the mouth of Little Eldorado, on Bonanza Creek? A. Yes.

Q. Did you ever hear of a place called Wiley at the mouth of Solo Creek? A. No.

Q. You didn't know the Court had fixed that place as the headquarters of the recorder? A. No, sir.

Q. You don't know what men were over in that section, do you? A. No, I do not.

Q. You don't know the men that were camped down at the mouth of Bonanza, do you, about two miles and a half from Little Eldorado?

A. I didn't know there was anybody there at all.

Q. Did you know a man named Hertzberg there? [180—158] A. No, sir.

Q. You didn't know five or six others? A. No.

(Testimony of George L. Gates.)

Q. You are basing your opinion of the men that were there by the men that were at the James camp?

A. That is all the men I knew, yes.

Q. How much of the territory had you gone over previous to the 6th day of July?

A. I had been pretty well all over it—I had been over Bonanza Creek, Johnson Creek, Wilson Creek, Glacier—I had been pretty well all over the camp there.

Q. And the six members of your *part* from across the line are the only ones you knew in that section?

A. Those are the only ones I know of, yes.

Q. Carl Whitten had no men at his place?

A. I didn't see none there.

Q. Charley Hanson was not there, Whitten's partner? A. I didn't see him.

Mr. DONOHOE.—That's all.

Witness excused. [181—159]

[Testimony of Howard H. Fields, for Defendant.]

HOWARD H. FIELDS, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. LEEHEY.

Q. What is your name? A. Howard H. Fields.

Q. What is your place of residence?

A. Salt Lake City.

Q. What is your occupation?

A. Mining engineer.

Q. Were you in the White River of Shushana region of Alaska in the summer of 1913? A. I was.

Q. In your professional capacity?

(Testimony of Howard H. Fields.)

A. In my professional capacity.

Q. State in a general way your familiarity with the district and what you did in order to become familiar with it.

A. In May, 1913, I left White Horse, crossing the Donjak River to the head of the White, or the mouth of the North Fork, and in July I came to Cordova, coming over the Chetistone and returned in the last days of July, leaving the North Fork of the White July 29th I came into the Shushana and spent the last day of July and the months of August, September, October and November in the Shushana.

Q. During that period did you travel about the various creeks?

A. During that period I spent the majority of my time traveling about the creeks.

Q. How many creeks in the so-called Shushana diggings did you visit?

A. I think I visited them all.

Q. State, without revealing any professional confidences, in a [182—160] general way the purpose of your inspection at that time.

A. The purpose was to gain data, to gather data, for a map of the district—in fact the majority of my time was spent in pacing the claims, taking notes on the different location notices that were posted, observing the geology, getting data for a map that would cover the district both as to geology and claims, the dates they were located—I think that covers it—contours.

Q. You have prepared such a map?

(Testimony of Howard H. Fields.)

A. I have prepared such a map.

Q. Did you visit all the principal creeks?

A. Yes.

Q. State whether or not you have examined the monuments, corner markings and stakes of the various claims.

A. The major portion of my time was spent examining the center monuments, that is, the routine of the work was more or less as follows: To start at the head of the creek with the use of a compass and pace the center line of the claim, taking the direction of it with a compass, making a note of it and examining the geology on both sides of it.

Q. State whether or not you examined a large number of the corner monuments, corner stakes I will say, of the claims.

A. During the time I was there I examined a large number I should say.

Q. Now, it is a fact, is it not, that a great many of those stakes, particularly the early locations, were willow stakes?

Mr. DONOHUE.—We object to that unless confined to the claim in controversy.

Objection overruled; plaintiff excepts.

A. It is a fact that the major portion of the country that was staked was above the line of spruce timber and willow stakes [183—161] were the handiest and naturally were used in the majority of cases.

Q. State the fact as you learned from your inspection in the district as to the legibility of markings on willow stakes after they have been in position and



(Testimony of Howard H. Fields.)

subject to weather conditions a period of time—state the result of your inspection as to the effect of weathering and the different periods of time of weathering.

Mr. DONOHUE.—We object to that unless it is confined to the claim in question.

Objection overruled; plaintiff excepts.

A. My experience was with willow stakes, when I first went in there, they were careless about cutting the bark off the willow stake; if the bark is not entirely removed to the sap wood, the remaining bark turns brown and unless marked with a pencil so the cut was made very legibly, with a soft pencil, within a month it would become almost illegible. If the stake was cleaned off entirely, the sap cut and allowed to dry, then it would take a marking of almost any soft pencil, but unless all the bark was removed, it would always turn brown as soon as it dried.

Q. Is that true where the face of the stake was shaved off?

A. It depends on the depth of the shaving.

Q. What effect would it have where the bark was left on the remaining portion?

A. The portion of the stake would only be effected where the bark was partially removed,—the bark remaining on the stake not touched would take a much longer period to turn brown.

Q. If a willow stake cut green was shaved on two sides and [184—162] markings there placed, the bark left on the stake and the stake set in the

(Testimony of Howard H. Fields.)

ground in its green condition, what from your observation and experience in the district would be the length of time which that lead pencil mark would remain legible, assuming that it would be marked with an ordinary lead pencil?

A. The length of time would vary with the hardness of the lead pencil—it would have to be a very soft pencil to have it remain,—well, two months would be a long time unless it was marked very distinctly and very heavily originally.

Q. Ordinarily would it last that long?

A. No, it would not,—I don't think it would.

Q. Would it last as long as from July 6th to August 30th, in your opinion?

A. With the same reservation, if it wasn't marked very legibly, it would not.

Mr. LEEHEY.—That's all.

Cross-examination by Mr. RITCHIE.

Q. If the bark was well removed and the outer wood where the sap carries were shaved pretty smooth and straight and written heavily with a soft pencil, would it carry that marking two or three months? A. I should say it would.

Q. It depends after all, does it not, on the shape the wood was in, the condition of the wood, at the time and the markings with the pencil and to some extent on the character of the lead that was used?

A. Yes.

Q. So that you cannot lay down a general rule,—every particular [185—163] piece and marking on it would have to stand on its own circumstances?

(Testimony of Howard H. Fields.)

A. But I should say if a green willow stake was taken and all the bark was not removed in all cases it would turn brown.

Q. But suppose all the bark is removed and the smooth part of the outer wood so that there is a plain surface and that is marked distinctly, how long then would the marking with the lead pencil writing continue and be legible?

A. If the wood is cut in past where,—past the place where the sap—where there is more sap than there is in the hard wood and it is marked very legibly with a soft pencil, it is my opinion it would stay three months at least.

Q. In these posts you noticed did they very generally peel the bark off or did a great many of them have a smooth, flat face?

A. The first posts put up there were, I should say, very poorly peeled.

Q. If the posts were shaved down, it would carry the mark a good while?

A. With the reservation that the pencil writing was placed there originally?

A. Are there a great many dry or comparatively dry willow trees there?

A. Not a great many.

Q. Do you know if any of those were ever used?

A. They were at times but they were very much harder to peel.

Q. Did you ever examine the stakes on these claims on Big Eldorado Creek?

A. Merely in a superficial way, passing by them.

(Testimony of Howard H. Fields.)

Q. Have you any recollection as to whether all of them were [186—164] pretty plainly faced?

A. My recollection of the stakes on Big Eldorado was that they were very small ones and not particularly well faced as I remember it.

Q. You have no recollection as to the exact depth to which they were shaved off? A. No, sir.

(By Mr. LEEHEY.)

Q. You also include the reservation in your answer to Mr. Ritchie's question as to the length of time they would remain legible, three months, that they must be written with a soft pencil?

A. Yes, sir.

Q. If written with a hard pencil would it remain three months? A. It would not.

Q. If written with a medium hard pencil, it would remain proportionately, I presume?

A. Proportionately, yes, sir. The fact of the case is with a harder pencil the lead doesn't come off, it merely crushes the fibre of the wood and for a few moments it looks fairly legible, but the rain will wash it right off.

(By Mr. RITCHIE.)

Q. How about an indelible pencil?

A. I don't remember seeing any stakes marked with an indelible pencil.

Q. If a man made the letters by boring down pretty hard on the pencil, so as to cut into the wood a little bit, would that fill it with lead and carry longer? [187—165]

A. It would have to be pretty soft.

(Testimony of Howard H. Fields.)

Q. Is the wood hard?

A. No, it is pretty soft.

Q. It is a soft, spongey wood?      A. Yes, sir.

Mr. RITCHIE.—That is all.

Witness excused. [188—166]

[**Testimony of W. E. McKinney, for Defendant.**]

W. E. McKINNEY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. LEEHEY.

Q. What is your name?      A. W. E. McKinney.

Q. What is your place of residence?

A. Forty Mile.

Q. How long have you lived in this northern country?      A. About twenty-two years I think.

Q. What is your occupation?      A. Miner.

Q. What character of mining have you followed?

A. Placer mining.

Q. Exclusively?

A. Well, since I have been here I have done no quartz mining.

Q. During the last twenty-two years you have followed placer mining exclusively.

A. Yes, while I was mining.

Q. You have not engaged in any other mining business?      A. No.

Q. You have followed prospecting?      A. Yes.

Q. Have you followed prospecting a great portion of that 22 years?      A. Quite a lot, yes.

Q. Do you know the defendant F. W. Purdy of Forty Mile?      A. I do.



(Testimony of W. E. McKinney.)

Q. Do you know Mr. G. L. Gates who has just testified?     A. Yes, I do.

Q. Where were you in the latter part of May, 1913? [189—167]     A. I was in Forty Mile.

Q. When did you leave there?

A. I left there on the evening of the 30th I think or 31st of May—the 30th or 31st of May, I think it was the 31st, three o'clock, between 2 and 3 o'clock.

Q. What was the occasion of your leaving there and where were you going to?

A. Going on a prospecting trip.

Q. What occasioned you to leave at that particular time, anything special?

A. Yes, I had a letter Nelson had written to Mr. Gates, that he had a prospect and told us to come up and meet him in Dawson.

Q. Where had Nelson written from?

A. From Dawson.

Q. To Gates at Forty Mile?     A. Yes.

Q. How long previous to the 31st of May had such letter been received?

A. I think it was somewheres about the 28th or 27th.

Q. Then you left on the first boat following?

A. Yes.

Q. Accompanied by whom?     A. Mr. Gates.

Q. Do you know anything concerning a certain power of attorney from Mr. Purdy to Mr. Gates having been executed in Forty Mile on or about the last days of May?     A. I do.

Q. Without stating the contents of that, state in a

(Testimony of W. E. McKinney.)

general way what you know about its execution at that time? [190-168]

A. It was executed in Forty Mile on or about the 30th, I think, the 30th day of May.

Mr. DONOHOE.—We move to strike the answer as not responsive to the question and being a conclusion.

Motion denied; plaintiff excepts.

Q. State what you know about its execution.

A. This power of attorney was executed there in Forty Mile.

Q. How do you know that—what did you see done, yourself? A. Why, I witnessed it.

Q. At whose request? A. At Purdy's.

Q. Was there any other witness?

A. McDonald of the store.

By the COURT.—Who signed this power of attorney and to whom did it run?

A. To Gates, empowering him to locate mining ground in Alaska.

By the COURT.—Signed by whom?

A. Signed by myself and McDonald.

Q. In what capacity? A. As witnesses.

Q. Who signed it? A. Frank W. Purdy.

Q. And the power of attorney ran to whom?

A. To G. L. Gates.

Q. Do you know whether the document was executed before any magistrate, notary public or other officer? A. It was.

Q. Who? What magistrate? Give his name and official title? A. Captain McLeod of Forty Mile.

(Testimony of W. E. McKinney.)

Q. And what is his official title? [191-169]

A. He was a notary public for taking affidavits and acknowledgment in Yukon Territory.

Q. Where did he reside? A: In Forty Mile.

Q. Now, did you accompany Mr. Gates to Dawson?

A. I did.

Q. You may state what you did after arriving there with reference to a prospecting trip in Alaska.

A. We met Nelson, I think, the first day of June, at five o'clock in the morning when the boat landed and we got our outfit and took passage on the boat to the mouth of—that was the second, I think—Stuart, near the mouth of Stuart; from there took a poling boat and poled up to White River, what was known as San Pete Bar and there met Doyle and Taylor with pack horses.

Q. Who was in the party that poled up the river?

A. Me and Nelson and Gates.

Q. And where were Doyle and Taylor coming from when you met them at San Pete Creek?

A. They were coming from Coffee Creek, they had taken a boat and were coming overland.

Q. They were also en route from Dawson?

A. Yes, sir.

Q. And you met by appointment? A. Yes, sir.

Q. What did you do then?

A. We took the pack horses and from there proceeded to the diggings.

Q. You refer to the Shushana diggings?

A. Yes, sir. [192-170]

Q. When did you arrive there?

(Testimony of W. E. McKinney.)

A. I think it was on or about the 26th or 27th of June, 1913—we had no calendar.

Q. How long did you remain in the Shushana region continuously from that date?

A. Up until September some time, somewhere along the 12th or 10th.

Q. Where did you go then?

A. I went from there to Dawson and from there to Forty Mile.

Q. During that period that you were in the Shushana, from the latter part of June until the latter part of September did you do any prospecting?

A. I did.

Q. Did you locate any mining claims? A. I did.

Q. Did you become familiar in a general way with the creeks in that country? A. I did.

Q. Do you know from personal knowledge the creek commonly designated as Big Eldorado Creek?

A. I do.

Q. Did you locate any mining claims yourself on that creek? A. I did.

Q. What claim did you locate?

A. I located Number One Below Discovery and Number Three.

Q. You located those claims for yourself or as attorney in fact for others?

A. I located as attorney in fact for others, A. P. Schultz and Aleck Kingwall.

Q. What day did you make the location? What day did you make your discovery and post the notice and stake? A. July 6th. [193—171]

(Testimony of W. E. McKinney.)

Q. Who was present on that occasion?      A. Nelson, Doyle, myself and Gates.

Q. Where were you camped at that time?

A. We camped on Little Eldorado,—at the mouth of Little Eldorado, on Bonanza Creek.

Q. How many people were in the immediate vicinity at that time, in what is known now as the Shushana diggings?

A. There was ourselves, that is all I know of at that time—the party that went in.

Q. Who else besides the party of four you have just named?

A. Besides the four there was Taylor and James.

Q. Were there any other men in the district at that time?      A. Not to my knowledge.

Q. On what day was it you said you made this discovery and staking of those claims?

A. 6th day of July.

Q. State how you came upon the ground and where you came from and when you came?

A. Came from the mouth of Little Eldorado on the 6th of July.

Q. The morning of that day, I presume?

A. Yes, left in the morning.

Q. When did you arrive on Eldorado Creek?

A. I should judge it takes probably two hours to go over—probably about ten o'clock we arrived there, between 9 and 10, maybe later possibly—I don't know exactly.

Q. Did you do any prospecting then?

A. I did—such as panning.



(Testimony of W. E. McKinney.)

Q. Did you observe any prospecting done on the ground which was subsequently located as number 2 Below Discovery?

A. Yes, I noticed the crowd panning up and down the creek at different [194—172] points where bedrock would stick out and show up particularly.

Q. I am asking particularly as to prospecting and work done on that ground.

A. Gates was panning on it, yes.

Q. Did you witness his panning?      A. Yes.

Q. State the results he obtained.

A. Probably three or four colors, maybe more, and black sand.

Q. You have prospected a great many years and located placer mines?      A. Yes.

Q. State whether in your opinion the indications of gold or the actual gold obtained were such as would justify a prudent man spending further time and money in the development of the ground.

A. I think it was sufficient, yes—I consider it so.

Q. Were the indications such as would indicate that profitable mining might be developed?

A. It was.

Q. Now, I wish you to describe to the jury in detail just how the party proceeded to stake and locate mining claims on that creek, on that day.

A. We all went over in a bunch together, the four of us, and it had been common with us there to stake, in fact the timber being scarce, the way we staked our ground then was, we used the posts between, one would use the upper half and the other the lower half

(Testimony of W. E. McKinney.)

of the post; on the upper end we would say the upper limit or lower limit as it happened to be, that would be to designate one claim and the other side the other, instead of all using double sets of stakes; the stakes were scarce and only willows and very [195—173] small and that was the way we staked; and we would build our monuments that way also; we built a pyramid of rock, we all built together, two or three might be building one and the others staking—we build a monument like that and we would each use that as a monument—that would designate the lower end of one claim and the upper end of another and stake it accordingly; we didn't all build separate monuments and I don't think there was a claim, I am positive, on the creek that had two monuments until after other parties got in and got placing them.

Q. State just what you mean by the monuments as distinguished from stakes—explain to the jury what part of the claim is marked by a monument.

A. They would use them as the lower end—it would be used as the lower centre end of say Number One Below Discovery and he would build a monument here Claiming Discovery, a monument of rock 1320 feet down or up stream; then we would build another monument and you might claim from that then down 1320 feet—I could go and locate and he did; that is the way I located and all of us located in that way, claiming 1320 feet from the other monument up, as it happened to be.

Q. And on what part of the claim was the stakes placed you have just described?

(Testimony of W. E. McKinney.)

A. They would be placed at the corners, describing the limits and corner stakes on each limit; they would commence say at the lower end on the right limit; that would be designated as lower corner stake on left limit of whatever claim it was, two or three; the upper side would be for one and the lower side for the other.

Q. This was the method pursued by your party on that day, July 6th,? A. It was.

Q. You may state, then, further, how you marked the corner—the stakes you have indicated as the corner monuments? [196—174]

A. Do you want me to define how this particular claim was or the custom?

Q. I am asking for the general custom first.

A. Say this is the lower stake on the left limit of the creek—we would **call that** the lower stake on the left limit of No. Two Big Eldorado; then over on the other side we would call it the lower corner stake on the right limit of Big Eldorado Creek, and so with the upper ones.

Q. You say you would call it that?

A. Yes, sir.

Q. What, if you know, was the practice of your party with reference to marking?

A. To write it that way.

Q. How was it written?

A. Written that way—it was written that way.

Q. By what method? A. Lead pencil.

Q. First describe what was done to the stake.

A. The stakes were willow stakes—

(Testimony of W. E. McKinney.)

Mr. DONOHOE.—Is he referring now to the markings on No. 2 Below?

Mr. LEEHEY.—It is the general method pursued.

Mr. DONOHOE.—We object; the testimony should be confined to this claim.

Objection overruled; plaintiff allowed an exception.

Q. State in a general way the size and character of these stakes.

A. About the largest stakes we could get, the largest willows we could get, we would get them, two or three feet long—some would taper so fast—

Q. Were they all willows? A. Yes, sir.

Q. And about what thickness? [197—175]

A. Well, the largest I guess we could get wouldn't exceed two inches.

Q. And the smallest you would use?

A. About an inch and a half.

Q. About how long? A. About three feet.

Q. How high would you set them above the ground?

A. They wouldn't go into the ground very deep, probably three feet above the ground.

Q. Now, I believe you stated that you located Number One Below Discovery on Big Eldorado Creek. A. I did.

Q. You may describe to the jury your lower monument on that claim, if you have a lower centre monument.

A. It was built of rock, about three feet I should judge, across the base and about three feet high, pos-

(Testimony of W. E. McKinney.)

sibly 21½, of boulders picked up there in the creek.

Q. State whether that was also used as a monument for another claim.

A. It was used as the lower centre stake of Discovery, centre end stake.

Q. You are describing the monument on the upper end of your Number One?      A. Yes.

Q. Describe the monument on the lower end of your Number One.

A. It was built the same, about three feet high, or two feet and a half across the base.

Q. Built of rocks?      A. Yes, boulders. [198—176]

Q. State whether that was used also as a monument for another claim.

Mr. DONOHOE.—We object to that as leading.

Objection overruled; plaintiff allowed an exception.

A. It was used at the centre end stake of Mr. Gates—we had a willow stake.

Q. What centre end stake of his?

A. The upper.

Q. Do you know of your own knowledge that Mr. Gates located that claim on that day?      A. I do.

Q. How do you know?

A. I was there with him personally.

Q. Did you see him establish his monument?

A. I did.

Q. State what monuments Mr. Gates established.

A. He established this monument, the monument below—it would be 132 feet from my monument.



(Testimony of W. E. McKinney.)

Q. Describe that monument.

A. Well, it was built of rock, the same as the other, about two feet and a half or three feet at the base and about three feet high.

Q. State what further was done, if anything.

A. He wrote a notice and placed that on a board about, I judge, 16 inches long, or 18.

Q. Did you see that notice?     A. I did.

Q. Do you remember how it was signed?

A. He signed his name to it, I think; I didn't see it particularly, I didn't look at it close to see.

Q. Where was the notice placed?

A. It was placed on the lower end of the claim.

[199—177]

Q. Are you positive what end of the claim it was placed on?     A. Yes, the lower end.

Q. The lower end of what claim?

A. The lower end of Number Two claim on Big Eldorado Creek.

Q. Below Discovery or Above?

A. Below Discovery.

Q. You are positive then that the discovery notice or the location notice of placer mining claim Number Two Below Discovery on Big Eldorado Creek was placed—on which end of the claim?

A. On the lower end.

Q. And you saw it placed there?     A. Yes, sir.

Q. On what day?     A. On July 6th.

Q. What year?     A. 1913.

Q. Describe the notice to the jury, how it was written, whether on a board or paper or otherwise.

(Testimony of W. E. McKinney.)

A. It was written on a board and it stated claiming—it was written in the regular form—1320 feet up stream for mining purposes and dated—I suppose he put his name to it, his name is on it anyway, his name is signed to it anyway, or it was the last time I saw it and I think witnessed by one of us—I don't know which one.

Q. Was that written on a paper?

A. On a board; the board was about 16 inches long and about four inches wide—written with a lead pencil.

Q. State the character of the board, was it rough or smooth?

A. It wasn't very rough; it was a smooth board such as a milk case would be or something of that kind—I think it was a piece off [200—178] of a milk or fruit case.

Q. Did Gates establish any monument at the upper center end? A. He put a stake in my monument.

Q. He used your lower monument on Number One?

A. Yes.

Q. Did you see Gates establish his corner?

A. I did.

Q. Now, describe to the jury how they were established, what they consisted of and how they were marked.

A. They consisted of a willow stake, flattened on both sides, I think, and were about two feet and a half or three feet long,—about three feet long, standing about three feet out of the ground, possibly 2½ and they were marked as I before stated.

(Testimony of W. E. McKinney.)

Q. Describe to the jury just how they were marked by Mr. Gates, if you know.

A. They commenced on the left-hand limit, I think—I don't know which limit, I am not positive which side but he described them as I have said before—commenced on the left-hand limit of the creek and called this the lower post, lower corner post of Big Eldorado Creek, left limit.

Q. How did he mark that post?

A. With a lead pencil.

Q. And what did he write on there with the lead pencil?

A. He wrote on it Number One stake left limit of Big Eldorado Creek.

Q. Do you remember whether he gave the numbers?

A. The lower stake,—I don't remember whether he put the number of the stake on it or not; the lower corner stake, I think that is what he put on, I didn't watch him write it but I think that is what he put on—that is what they had been putting on.

Q. Did you read it after it was written? [201—179]

A. I didn't read all the stakes.

Q. Did you read any of them?

A. I did; to the best of my knowledge that is the way it was written, describing it as the corner stake on the left limit of Number 2 Eldorado Creek, lower corner stake.

Q. You say you didn't read all the stakes?

A. No.

Q. Didn't you stake the claim above it?

(Testimony of W. E. McKinney.)

A. I did.

Q. State whether you used the same stakes or established others.

A. I joined to him on the upper end.

Q. What do you mean by joined?

A. I wrote my location notice on them.

Q. I am asking whether or not you had the same stakes for your claim above and your claim below.

A. I did.

#### AFTERNOON SESSION.

Q. Were there any markings on those stakes?

A. There was.

Q. What markings?

A. Markings that I made, and Gates.

Q. And for what purpose did you make markings on those stakes?

A. To designate my lower corner of Number One Below Discovery.

Q. You may state what markings you placed on those stakes yourself—I refer now to the stake on the upper corner of No. 2 right limit.

A. I called that the lower stake of Number One.

Q. What you wrote I want.

A. I marked it corner stake left limit of No. One Below Discovery.

Q. Now, then, what markings, if any, did you place upon the corner [202—180] stake which marked the upper corner of Number 2 Below on the right limit—did you place any markings on the stake which marked the corner of Number Two Below Discovery on the Big Eldorado Creek on the right limit, the

(Testimony of W. E. McKinney.)

upper corner on the right limit?

A. You mean the lower end of the claim? Of Number One?

Q. No, I am referring to the stake at the upper end of No. 2, on the right limit—did you place any markings on that stake? A. I did.

Q. What markings?

A. It was the lower corner, right limit, Number One Below Discovery on Big Eldorado Creek.

Q. You wrote that on the stake, did you?

A. I did.

Q. Now, then, did you place any markings on the stake which marked the lower corner of Number Two Below on the right limit—did you place any markings on that stake? A. I did.

Q. What markings?

A. That would be the upper corner on the right limit of Number 3 Eldorado, on the right limit of Big Eldorado.

Q. Did you mark that stake for that corner?

A. I did.

Q. Did you place any markings on the corner stake which indicated the lower corner of Number Two Below Discovery on Big Eldorado on the left limit?

A. I did.

Q. What markings did you place on that?

A. I called that the upper corner of Number 3, left limit.

Q. State what markings you wrote on the stake.

A. I wrote those markings.

Q. You are positive you wrote those markings on



(Testimony of W. E. McKinney.)

all four stakes? [203—181]. A. Yes.

Q. How did you write them?

A. With a lead pencil.

Q. All those four stakes were set by Gates, I believe? A. Yes, sir.

Q. And you adopted them for the corners?

A. Yes, sir.

Q. When you made those markings, state whether you saw any markings placed thereon by anybody else. A. I did.

Q. State what they were.

A. They were marked somewhat the same as mine—the one I seen, his corner post, described his corner on certain limits.

Q. By whom was it marked?

A. By Mr. Gates.

Q. Did you see him mark them?

A. I see him mark some of them.

Q. Did you read his markings?

A. Some of them.

Q. You didn't read all of them?

A. No, sir, not particularly.

Q. Are you positive he had markings on any of the stakes? A. I think he had them on all of them.

Q. Are you positive he had them on any?

A. I am.

Q. Now, I believe you stated those stakes were blazed on two sides? A. Yes, sir.

Q. Were those the same stakes you cut that morning? A. Yes, sir.

Q. From where did you obtain the stakes, or Gates,

(Testimony of W. E. McKinney.)

or whoever did obtain them? [204—182]

A. In the valley of the creek, Big Eldorado.

Q. Where with reference to the claim designated as Number 2?     A. Below it.

Q. About how far?

A. I think they were on Number 3, about Number 3, where we could get a large bunch of willows.

Q. When were they cut?     A. That day.

Q. Were they green stakes or dry?

A. They were green.

Q. When were you last on the claim designated as Number Two Below Discovery?

A. I don't remember just exactly the date, but somewheres along about, I should think, the 5th or 6th of September.

Q. Had you been on the claim frequently in the meantime?     A. I had.

Q. About how many times, approximately, in a general way?

A. Along the latter days of August I first went over it—I don't remember the date exactly.

Q. Did you do any work on the claim?

A. I did.

Q. What work?

A. I done the representation work.

Q. Now, when you were there on those last occasions did you observe the stakes set by Gates as the corner monuments?     A. I did not.

Q. When did you last notice the stakes?

A. When we left the creek, after staking them, setting the stakes.

(Testimony of W. E. McKinney.)

Q. You never examined the stakes after that?

A. I didn't see any to examine. [205—183]

Q. Now, when was it that Gates left on his trip down to Beaver Creek, the international boundary?

A. It was about the 22d of July, I think.

Q. Referring to the power of attorney which you say was executed by the defendant Purdy to Gates and which you signed as a witness—when do you recall next seeing that power of attorney after your signature as a witness?

A. On Eldorado Creek or on Bonanza, at the mouth of Eldorado Creek.

Q. About what time?

A. About the 26th I think, the 25th or 26th, I should judge.

Q. When with reference to the time Gates left for his trip?

A. Four or five or six days, maybe a week.

Q. You and Gates were camping together, I believe?     A. We were.

Q. What was the occasion of your seeing the power of attorney on that date?

A. I was taking it to Morgan to have it filed for record.

Q. How did you come to do that?

A. Through request of Gates.

Q. State whether you read that power of attorney on that occasion?     A. I did.

Q. Do you remember in a general way at least, or specifically, its contents?

A. I remember part of it.

(Testimony of W. E. McKinney.)

Q. State what it contains as accurately as you can remember the same?

Mr. DONOHOE.—We object to the testimony on the ground that it is not the best testimony and the record speaks for itself and for all the reasons mentioned in the objection made to the testimony of Gates.

Objection overruled—plaintiff allowed an exception. [206—184]

Mr. LEEHEY.—The defendant understands that all this testimony as to the power of attorney goes in under the same objection and exception.

A. It was a power of attorney from Purdy empowering Gates to locate and record mining claims in Alaska, drawn up in the usual form of powers of attorney.

Q. Was it in writing? A. It was typewritten.

Q. State whether it was signed by anybody; if so, by whom. A. It was signed by Frank Purdy.

Mr. DONOHOE.—We object to that as leading.

Objection overruled—plaintiff excepts.

Q. Did it bear the signature of anybody else?

A. It did.

Q. State who and in what capacity?

A. Witnessed by myself and McDonald, acknowledged before Captain McLeod.

Q. Who is Captain McLeod?

A. He is a notary for taking affidavits in the Yukon Territory, the customs man.

Mr. DONOHOE.—We move to strike out the last answer as not the best evidence as to whether Mr.

(Testimony of W. E. McKinney.)

McLeod was a notary or not.

Motion denied—plaintiff allowed an exception.

Q. State whether these signatures all appeared on the document at the time you delivered same to the recorder for record?

A. They did also the Consular's.

Q. What about the Consul—state fully the facts as to that.

A. It was the Consul's certificate stating he knew McLeod to be a notary for taking affidavits and acknowledgments in the Yukon Territory, with his seal and two dollar stamp attached. [207—185]

Q. What seal do you refer to?

A. Mr. Cole's, the American Consul at Dawson.

Q. Consul for the United States? A. Yes, sir.

Q. Were there any seals on the document?

A. His seal was there.

Q. Were there any others?

A. And McLeod's, two seals anyway—I don't know whether it was McLeod's now, I don't remember but there were two seals.

Q. You are now describing the document as it was when you delivered it to the recorder for record?

A. Yes, sir.

Q. State what else you did with reference to the recorder—state what you did at the recorder's office with reference to this document.

A. Gave it to Mr. Waller to have it recorded.

Q. Did you do anything else?

A. He didn't return it to me.

Q. He didn't return it to you—at that time did



(Testimony of W. E. McKinney.)

you do anything else? Did you do anything with reference to the payment of fees?

A. Sure, I paid the fees.

Q. Who was Mr. Waller?

A. He was a deputy of Mr. Morgan's.

Q. And who was Mr. Morgan?

A. Morgan was the recorder, supposed to be the official recorder that was appointed from this district and sent over.

Q. The White River recording district?

A. Yes, sir.

Q. On what date was this done?

A. It was about the 27th or 26th, somewhere along there—that is [208—186] the date I gave them to him—I received them on the 29th back.

Q. State the condition of the document when you received it back in reference to its condition when you delivered it—any changes in it?

A. Nothing more than that there was an affidavit of the recorder on the back of the time it was recorded.

Q. Did you say affidavit?

A. Well, it was a statement on the back of it—the same as all the location notices.

Q. State the contents of that statement on the back.

A. It said recorded and filed, and gave the date and hour and book and page—I don't remember just what book it was, by request of W. E. McKinney.

Q. Was there any signature?

A. Yes, it bore the signature of Mr. Waller.

(Testimony of W. E. McKinney.)

Q. State the fact whether it bore any other signature than that of Mr. Waller.

A. I think it bore also what's his name's signature too; I am not positive.

Q. Who do you mean?      A. Mr. Morgan.

Q. The recorder?      A. Yes.

Q. What did you do with that document?

A. I *turned* it to Mr. Gates.

Q. When?

A. When he returned from San Pete Bar.

Q. Did Mr. Gates ever return it to you?

A. No, sir.

Q. Do you know where the document is now?

A. I do not. [209—187]

Q. Did you hear the testimony of Mr. J. J. Ford, a witness on behalf of the plaintiff in this action?

A. I did.

Q. Do you recall having a conversation or conversations with Mr. Ford on or in the immediate vicinity of claim #2 Below Discovery on Big Eldorado Creek during the last days of August, 1913?      A. I do.

Q. You may state to the jury just what occurred, beginning with the first conversation; begin with the first conversation you had with reference to this property at any time or place and state the facts and circumstances of that conversation?

A. The first time I met Ford it was on Eldorado Creek, a tributary of Bonanza, along in August.

Q. You refer to Little Eldorado?

A. Yes, sir, I refer to Little Eldorado, a tributary of Bonanza, probably along about the—I don't know

(Testimony of W. E. McKinney.)

the date, probably the 20th, anyway the first time I met him was over there, on Bonanza Creek, at the mouth of Little Eldorado, and I didn't know him and he told me then who he was, made himself known and he asked me for a lay on Number Two Below Discovery on Big Eldorado. I told him that it didn't belong to me, I told him who it belonged to and asked him if he was acquainted with him and he said he was not and I said he ought to know him, he had been around Forty Mile quite a while and I told him to go and see him and he asked me if I would see Gates and see if there would be a show for him to get a lay; and I asked him about what would be fair and I told him about 60% and he said he would see his partner and went off and I didn't see him any more until I went over to do the representation on or about the last days of August; [210—188] he was working on the ground; I spoke to him and asked him what he was doing there; representing the claim; would he agree to do the representation work if I would give him a lay and prospect the ground, and he said, No, they had staked it and found it to be a fraction, there was no stakes or anything there at all on this ground and he went on to tell me that he was not jumping the ground, it wasn't his practice to jump it, and I asked him who staked it and he said a man named Sutherland, his partner, and he was doing the representation work. I had no more talk with him much that day but I came back over, I think it was the next day probably, the following day, and had another talk with him and he still con-

(Testimony of W. E. McKinney.)

tended that the claim was not staked and showed me where the location notice was, that it was on the upper end of the claim instead of the lower end, on the upper monument and I talked to him and told him that I thought he was jumping the ground; he still maintained he was not jumping it, he was locating it as an independent fraction; so I told him that this notice likely had been moved up by someone; he spoke up and asked me if I thought he had moved it; I said no, I wasn't particularly accusing him of taking it up, I didn't think he was strong enough, words to that effect, something like that but it might possibly have been moved by squirrels, I didn't think he would take it at all, and so a few days after that his partner—I think the next day—Sutherland came along; he also had a talk with me with reference to it and I explained to him and told him how the claim was staked and located and he asked me where this man was; I told him he was over on Gold Run.

Q. What man?

A. Mr. Gates, who claimed the claim. That was about all the conversation I had with him. He contended the ground had never been [211—189] staked at all, that he wasn't jumping it, it was an independent fraction, an open piece of ground—the Surprise Fraction I believe he called it.

Q. Did you ever have any conversation with Mr. Ford concerning the possibility of his obtaining a lay on this ground, after that first conversation?

A. No, I did not.

(Testimony of W. E. McKinney.)

Q. Did you do anything concerning the location notice after Mr. Ford showed it to you at the upper end of Number Two?     A. I did.

Q. State what you did.

A. I took that down, moved it down, in the presence of a man, in the presence of two men, to the lower monument between Two and Three.

Q. Where did you place it with reference to where it was originally placed by Mr. Gates?

A. The same place.

Q. When was this done by you?

A. It was done, I think it was the second—the latter part of August or the first of September—I don't remember just the exact dates.

Mr. LEEHEY.—That will be all.

Cross-examination by Mr. DONOHUE.

Q. Do you know what date of the month and what month you went upon that ground after Sutherland had located it as the Surprise Fraction?

A. I think it was the latter days of August.

Q. You can't fix the date?     A. Yes, sir.

Q. What date was it?     [212—190]

A. I don't know the exact date.

Q. It might have been the second or third of September?

A. No, I don't think it was, not that late.

Q. Not as late as the second of September?

A. No.

Q. You are positive of that?     A. Yes.

Q. You testified that that notice was at the lower end originally, when put up by Mr. Gates?



(Testimony of W. E. McKinney.)

A. Yes, sir.

Q. Where was your notice for Three, the monument?     A. Also on that same monument.

Q. You put your location notice for Number 3 at the upper end of Number 3?     A. Yes, sir.

Q. When did you first see this power of attorney?

A. I first saw this power of attorney in Forty Mile.

Q. That is in the Yukon Territory?     A. Yes.

Q. How long have you resided in Forty Mile?

A. I have resided in Forty Mile off and on 22 years.

Q. What is your business there?     A. Miner.

Q. How much of that time have you been in the saloon business?

A. I haven't been in the saloon business?

Q. You have never been in the saloon business in Forty Mile?

A. No, sir—I was in the hotel business.

Q. Did you run a bar with it?

A. Yes, had a bar in connection.

Q. How long were you in the hotel business?

A. I think I was in the hotel business three years.

[213—191]

Q. Did you ever do any mining in Alaska before, before last summer?     A. Yes.

Q. Where?     A. Wade and Miller and Glacier.

Q. How many seasons did you put in on Wade Creek?     A. Two seasons.

Q. Were you born in the United States?

A. I was.

Q. And you are now a Canadian subject?

(Testimony of W. E. McKinney.)

A. No, sir.

Q. You never joined the Canadian government?

A. Never did.

Q. How come you to witness that power of attorney?  
A. At the request of Mr. Purdy.

Q. How do you know Mr. McLeod is a notary public?

A. I don't know he is—it is generally supposed he is.

Q. You don't know of your own knowledge whether he is or not?

A. I do not; I don't know you are one or any one else is for that matter—it is a supposition.

Q. You don't know whether he is a notary public or not?

A. I couldn't swear he was, but it is supposed he is.

Q. You read that power of attorney pretty carefully, did you?  
A. I did not.

Q. You read the acknowledgment carefully, did you?  
A. Not in particular.

Q. How do you know it was acknowledged at all?

A. I see the signature and seal there.

Q. That is all you saw?

A. I saw his name and saw the paper.

Q. Did you read the contents of the acknowledgment?  
[214—192]

A. I did.

Q. Just repeat the contents of the acknowledgment?  
A. Of Mr. Cole's, you mean.

Q. The acknowledgment of Mr. McLeod on that

(Testimony of W. E. McKinney.)

power of attorney—repeat the contents of that acknowledgment?

A. Well, I couldn't repeat it word for word—"I, McLeod, authorized for taking affidavits in the Yukon territory—"

Q. That was all that was on it?

A. No—knowed that so and so were present, admitted they were present and that the papers were executed in the presence of him at Forty Mile.

Q. When did you last see that paper?

A. I last saw that paper, I should think it would be—it was in July.

Q. About nine months ago?

A. The latter part of July.

Q. Last July?      A. Yes, the latter part of July.

Q. Did you read it at that time?

A. I looked over it, didn't particularly read it.

Q. Why did you look over it?

A. I looked to see if it was the power of attorney I got back after handing these papers in.

Q. Did you read it before you handed it in?

A. I looked at it to see if it was a power of attorney—that I had the power of attorney there.

Q. Can you recite any one line in that instrument?

A. It said, "I, F. W. Purdy, of Forty Mile, appoint and constitute G. L. Gates of Forty Mile my attorney-in-fact to locate mining claims in the Yukon Territory"—words to that effect, I couldn't just state it. [215—193]

Q. You are pretty sure that was part of the contents?

(Testimony of W. E. McKinney.)

A. It was a regular form of power of attorney, I suppose.

Q. What have you done since coming to Cordova to refresh your memory regarding that power of attorney? A. Why, I haven't done anything.

Q. Never talked it over with anyone?

A. I have talked it over with my attorney.

Q. Have you talked it over with Mr. Gates?

A. Some remarks, yes.

Q. And Mr. Leehey showed you a copy he has in his possession?

A. Didn't show it to me, I don't think, never noticed it.

Q. Did you read it? A. No, sir.

Q. You never saw the endorsement in Mr. Leehey's handwriting on the bottom of that copy?

A. I haven't looked at it.

Q. You never knew anything about it?

A. I heard you say there was one, here, yesterday.

Q. Didn't Mr. Leehey show you in the Windsor Hotel that copy? A. Not me.

Q. He never showed it to you? A. No, sir.

Q. And never told you the contents of it?

A. No, sir.

Q. And you didn't consult Mr. Doyle about it?

A. No.

Q. Do you want to be understood as testifying that yourself, Mr. Doyle, Mr. Gates and Mr. Leehey did not consult together regarding the contents of that power of attorney since you have been in Cordova—you and these other gentlemen didn't consult [216

(Testimony of W. E. McKinney.)

—194] and talk over that power of attorney since you have been in Cordova?

A. I said I talked with him about the power of attorney.

Q. The four of you talked over the contents of it?

A. I don't know whether the four of us did.

Q. You are testifying as to the contents of that power of attorney partially from your remembrance of reading it about nine months ago and partially from the consultation you had with the gentlemen here, are you not?

A. No, sir, I am testifying according to my memory.

Q. What is the source of knowledge from which you are testifying?

A. It is my memory of it, reading and seeing.

Q. You have a good clean memory of these things that have passed?

A. I have, on the power of attorney—that I surely had the power of attorney and had it recorded.

Q. What other instrument is there that you saw about the last of July that you can tell the contents of, any portion of the contents? What other instrument in writing is there that you can tell other than this power of attorney, nine months back? Can you state any other writing that you read about the latter part of July, 1913, and can tell the contents of it at this time?

A. Why, I read the Consular's affidavit.

Q. Independent of the power of attorney—some other and separate item?



(Testimony of W. E. McKinney.)

A. I don't understand you.

Q. Can you tell the contents of any writing other than the power of attorney that you read last July?

A. I don't know what you are referring to.

By the COURT.—The question is intended to test your memory and you are asked if you know of any other paper, either a power of [217—195] attorney, or a will, or a bill of sale, or anything that you saw about that time, that you can tell what it did contain and recollect it?

A. I could tell some of my own papers I was looking over, yes.

By the COURT.—That is what he is asking you.

A. I remember the papers of my own.

Q. Do you remember the contents of them?

A. Yes, sir.

Q. You had some powers of attorney yourself?

A. I did.

Q. How many?      A. Two.

Q. From whom?

A. One from A. P. Schultz and the other from Alexander Kingwall.

Q. And you located two claims on Big Eldorado at the same time this claim was located under power of attorney?

A. I located Number One for Mr. Kingwall and Number 3 for Schultz.

Q. When was Number Two Below Discovery on Big Eldorado located?      A. July 6th.

Q. Who was present when it was located?

A. N. P. Nelson, Tommy Doyle, myself and Gates.

(Testimony of W. E. McKinney.)

Q. Where were you on the third day of July?

A. I was on Chicken Creek and on Little Eldorado Creek, a tributary of Bonanza.

Q. Was Mr. Gates there also?

A. Mr. Gates was on Little Eldorado Creek.

Q. What were you doing on Chicken Creek the third day of July?

A. I went over with James and Nelson to look at some ground.

Q. Did you locate anything over there that day?

A. I did not.

Q. Whereabouts did you first reach Big Eldorado?

[218—196]

A. It would be somewhere near the mouth of Little Bear Creek, a tributary of Eldorado.

Q. What was the first claim located?

A. Discovery.

Q. What was the next claim above Discovery?

A. There was none located at that time.

Q. Was one located on Bear Creek or Bear Pup?

A. Yes.

Q. That was already located at that time?

A. It was.

Q. Who located that?

A. A man named Taylor.

Q. Was Taylor a member of the party?

A. That was with me?

Q. Yes.      A. No.

Q. Was Mr. Taylor on the creek at that time?

A. No.

Q. But it was located by Mr. Taylor on the 6th day of July?

(Testimony of W. E. McKinney.)

A. No, not the 6th—it was located when I was there, at that time.

Q. Was it located on the 6th of July?

A. Our claims were located on the 6th day of July.

Q. Was the first claim, the Bear Pup, located on the 6th of July besides Discovery?

A. No, I don't think so.

Q. Mr. Taylor is a partner of Mr. Doyle's?

A. Yes—I suppose so, I know of no writings or anything but traveling partners,—they came together.

Q. The first claim located was Discovery by Nelson?      A. Yes.

Q. Which end of that claim was the location notice placed on? [219—197]      A. On the upper.

Q. The next claim was a claim located by you for Mr. Kingwall, Number One Below?      A. Yes.

Q. Which end of the claim was that location on?

A. On the upper.

Q. On the upper end of that claim and the lower end of Discovery?      A. Yes, sir.

Q. On which end of the claim was the notice on Number 3 put, that you located for Schultz?

A. It was on the upper.

Q. Which end of the claim was the notice on Number 4 Below placed?

A. I wasn't down that far that day.

Q. You four men were all working together that went over there,—you were all friends?

A. We surely were, yes.

Q. Now, how many notices, written on boards, did

(Testimony of W. E. McKinney.)

you bring over from the mouth of Little Eldorado that morning.

A. We brought some of the boards over.

Q. How many did you bring over?

A. Four, I think, I don't know; I suppose they all had boards the same as myself—I had one.

Q. You had your boards? A. Yes, sir.

Q. Any notices written on them? A. Yes, sir.

Q. And you knew where you were going to place them before you went over there?

A. No, I didn't entirely know where I was going to place it; I had the whole creek to place it on at that time, could place [220—198] them anywheres I wanted to.

Q. And you took all the available ground on the creek at that time?

A. No, there wasn't a claim staked from Discovery up I know of—Discovery was open, all above Discovery; there was no lower Discovery staked at that time.

Q. Not down at the mouth?

A. It belongs to Hamshaw now.

Q. That wasn't staked at that time?

A. No.

Q. How did you proceed to stake Number One Below Discovery?

A. As I stated before I used the corner stakes, the upper corner stakes and the lower corner stakes of Mr. Nelson, the upper for Number One and his lower corner stakes for the upper end of Number 3.

Q. What was the first act you did towards locat-

(Testimony of W. E. McKinney.)

ing Number I Below Discovery?

A. The first act was to build a monument between Discovery, on the lower end of Discovery, and the upper end of One.

Q. Did you put up any corner stakes on that end, the upper end of Number One?

A. I don't remember whether I put them up or Nelson.

Q. Then you went down to the lower end of One?

A. Yes.

Q. And put a monument there? A. Yes.

Q. What did you do about staking the lower end of the claim, No. 1? A. I joined to Gates.

Q. What did you do at that time, what was the next step you did after erecting a monument?  
[221—199]

A. To write my notice on the stakes.

Q. You went out and wrote your notice on the stakes?

A. Describing the corners, the limit.

Q. At which stake did you put the lower end first?

A. I don't know which limit I went to first.

Q. Gates had those stakes already up?

A. He had his claim staked up, yes—his set up.

Q. He staked his claim before you staked yours?

A. Yes, I was getting stakes and building monuments.

Q. Where were you getting stakes?

A. Along the creek, the same as any three or four men would be at, they were all helping at one thing and another to stake—they were all helping one another to stake.



(Testimony of W. E. McKinney.)

Q. You want to be understood that Mr. Gates put up those stakes and wrote his markings on them and then you went out and wrote your markings on them?

A. Yes, on the upper end, that is for Number One.

Q. The upper end of Number 2 and the lower end of Number 1—Gates didn't make any of your markings on them? A. No.

Q. And you didn't make any of his markings?

A. No.

Q. In other words you didn't erect the corner post on the right limit and Gates the corner post on the left limit? A. No.

Q. Each man went out and made his own markings? A. Yes.

Q. What did you write upon your post on the right limit?

A. Left limit, Big Eldorado Creek, lower corner.

Q. Is that all— You referred to it as Big Eldorado? [222—200] A. Yes, sir.

Q. Your notice of location had been recorded as Eldorado, why did you put Big?

A. We called it Big Eldorado at that time.

Q. Your notice of location, however, was an error and the other was Little Eldorado?

A. They were commonly known as that.

Q. Who erected the monument that contained your notice of location at the upper end of Number Three? A. Why I helped erect part of it.

Q. And who helped on the rest?

A. I think Gates, Nelson—some of them.

(Testimony of W. E. McKinney.)

Q. You helped to erect part of that monument?

A. Yes, sir.

Q. Then if Gates stated that while you were erecting a monument at the lower end of Number One, he went down and erected a monument at the lower end of Number Two, he is mistaken.

A. I am not sure, I am not positive,—we were working as I say together; I am not so positive as to this.

Q. Now, of all those monuments that were erected there that day by you four men, the only one that contained two notices was the one at the lower end of Number Two and the upper end of Number Three?

A. All I know of.

Q. And you are positive that the monument at the lower end of Number One and the upper end of Number Two did not have a notice of location on it?

A. It had a stake stuck into the monument.

Q. You will swear positively the board was not there?

A. Yes, sir. [223—201]

Q. What impressed you to that extent?

A. Well, Gates was writing a notice and placing it on the monument below.

Q. The notice was written over on Bonanza, was it not?

A. No.

Q. Gates' board had no writing on it.

A. There was writing on it—he might have written part of it out on Bonanza or Eldorado.

Q. Who wrote your notice over at Eldorado before you came over?

A. No one.

Q. Your notices were bare boards when you went over there?

(Testimony of W. E. McKinney.)

A. No, they had some writing on them.

Q. Who wrote them?

A. I think it was Taylor.

Q. Taylor wrote all the notices, did he?

A. No.

Q. Do you know who wrote Gates' over at Eldorado?     A. I do not; I think Taylor.

Q. Do you know of Mr. Doyle locating Number 4 that day?     A. I do.

Q. And you are positive Doyle located Number 4 on the 6th day of July?

A. Yes, as near as our calendar might be correct, or our way of keeping dates; I couldn't be so positive, I had no almanac or nothing there.

Q. You were not so long in the country that you would lose track of the dates?

A. A person can't be very correct being sixty or thirty days out—I didn't know when Sunday or Monday came.

Q. Do you know whether it was Sunday or not you made the location?     A. I do not. [224—202]

Q. You are positive that your notices that were posted on the ground said the 6th day of July?

A. Yes, sir.

Q. And if Mr. Doyle's location notice as recorded says it was located on the third, it is an error, is it?

A. I think so.

Q. Who prepared the notice of location you had recorded for Number 2?

A. I think Mr. James—it was kinder complicated; I asked him to fix it out for me; it was an old notice for quartz.

(Testimony of W. E. McKinney.)

Q. What claim is that?

A. That was for Big Eldorado, Number 1 Below.

Q. Now, when you went over there to make these locations, you took some notices over to locate some claims above Discovery, did you not? A. No.

Q. Didn't you intend to locate above Discovery as well as below Discovery when you went over there?

A. No, unless it suited us—the looks of the ground.

Q. You took over some extra boards—you didn't use all you had? A. No, sir.

Q. You used all the boards you had?

A. Yes, sir.

Q. It was agreed before you went there that you were to have two claims, Gates one, Doyle one and Nelson one, was it? A. No, sir.

Q. It was not? A. No, sir.

Q. How did you just happen to have the exact number of boards you required?

A. Probably we didn't need any more. [225—203]

Q. How did you arrive at the fact that you would have two claims and the other gentlemen one?

A. We didn't arrive at that fact at all.

Q. You used just the exact number of boards you had with you?

A. I don't know whether we used the exact number; I used two—two is all I had.

Q. That is all you took over there?

A. Yes, sir.

Q. And the other gentlement, you don't know

(Testimony of W. E. McKinney.)

whether they used all or not?

A. I intended to stake for the two powers of attorney I had and consequently I didn't need any more boards.

Q. All the claims staked there except Nelson's were staked by powers of attorney that day?

A. I am not sure.

Q. You know Doyle staked for Markley by power of attorney?

Mr. LEEHEY.—We object to that, the record is the best evidence.

Objection overruled—defendant excepts.

A. I have heard so.

Q. When did you next return to that property?

A. The latter days of August, I think.

Q. Was it after Sutherland had located his Surprise Fraction?

A. I suppose it was Sutherland.

Q. You saw his notice, didn't you?

A. I didn't go up to look at it; I was told by the other gentleman, his partner Ford.

Q. That was the first time?

A. That was the first time I knew they were claiming it.

Q. You don't know what date that was?

A. Well, it was the latter days of August or the first of September, [226—204] somewheres along there, I am not positive.

Q. Did you know at that time he had posted his notice of location?

A. I did not; I never read his location notice.



(Testimony of W. E. McKinney.)

Q. Never read it, even after that?

A. No, sir.

Q. When did you first discover Purdy's location notice at the upper end of the claim?

A. On my first arrival over there, when Ford was there.

Q. What business had you removing that notice to the lower end—you were not interested in the claim?

A. I was sent over there to do the representation work for Gates.

Q. Have you any interest in that claim?

A. No, sir.

Q. Never did have?      A. No.

Q. When did you commence doing that representation work for Gates?

A. I say the latter days of August or the beginning of September.

Q. How much work did you do, how many days?

A. Eight days' work.

Q. Yourself?

A. Eight and a half days for one man.

Q. Who did the work?

A. Me and Mr. Kingwall and Schultz.

Q. Schultz did some work on Number Two?

A. Yes, sir.

Q. And Kingwall did some work on Number Two?      A. Yes.

Q. And yourself?      A. Yes, sir.

Q. You did no work there, however, until after Sutherland had located— [227—205] You did no

(Testimony of W. E. McKinney.)

work upon Number 2 until after Sutherland had located?

A. Nothing more than to locate and prospect it.

Q. How much prospecting did you do?

A. Did some panning.

Q. The first day?

A. That was when we first staked it, on the first day; I went to working Two; I panned the first day I came over there to work Two, in Kingwall's cut, where he was running above Ford; I brought a pan over and panned that day.

Q. Now, the first time you were over there, the day you located, you only spent two hours over there, your whole party, you have testified; you said your party was there only two hours that day?

A. I don't remember testifying to that—I never testified to two hours at no time; I never made any such statement, I don't think.

Q. Who was on the ground the first time you went over there?     A. Ford.

Q. Was he working on the ground that time?

A. Yes.

Q. Did he have a cut started?

A. He had a little drain there in the creek, yes, sir.

Q. Who was with you that day?

A. No one at that time.

Q. Did you do any work on the claim that day?

A. I did.

Q. How much work, how many hours?

A. I should judge about 4½ hours or five hours.

Q. Where did you work?

(Testimony of W. E. McKinney.)

A. I worked on the lower end.

Q. When did you next return to the property?

[228—206] A. I returned the next day.

Q. Who was with you that day?

A. Kingwall and Schultz.

Q. What day was that Schultz was with you, the second day? A. Yes, sir.

Q. He did some work? A. Yes.

Q. On this property?

A. On the one below, on Number Three.

Q. Who did the work on Number Two?

A. I did and Kingwall and Schultz and Mr. Atkinson—myself, Schultz, Miles Atkinson and Kingwall.

Q. You said Schultz was working there?

A. He represented Three, he worked that day on Three.

Q. Who worked the second day you went over there on Two? A. Me and Kingwall.

Q. How long did you work?

A. About five hours.

Q. When did you return to the property next?

A. I think the third of September, whatever the dates were, I worked on it continuously until that time, did the representation work.

Q. I want to know the hours you worked on that claim.

Mr. LEEHEY.—We object to any further cross-examination concerning the annual representation work, it is not involved in this action in any manner and is improper cross-examination. The defendant had all of the calendar year of 1913 in which to per-

(Testimony of W. E. McKinney.)

form the annual labor, and it would not be subject to relocation until the first day of January, 1914.

By the COURT.—The objection will be sustained at this time on the [229—207] ground that it is not proper cross-examination.

Mr. DONOHOE.—Because it is the understanding that there is no testimony before the Court that the assessment work has been done?

By the COURT.—Yes.

Mr. DONOHOE.—That's all.

(By Mr. LEEHEY.)

Q. In your cross-examination in stating the contents of that power of attorney from Purdy to Gates I believe you made the statement that it authorized Gates to locate mining claims in the Yukon Territory—is that correct?     A. In Alaska.

(By Mr. DONOHOE.)

Q. Do you remember recording the notice of location for this claim Number Two?     A. I do.

Q. Do you remember that that notice of location said, starting at the initial monument and running 1320 feet down the stream?     A. No, sir.

Q. You don't remember that?     A. No, sir.

Witness excused. [230—208]

**[Testimony of Robert W. Wiley, for Defendant.]**

ROBERT W. WILEY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. LEEHEY.

Q. What is your name?

A. Robert W. Wiley.

Q. Are you familiar with the White River record-

(Testimony of Robert W. Wiley.)

ing district, Alaska? A. Yes, sir.

Q. How long have you been familiar with that country? A. Since 1902.

Q. You have property there? A. I have.

Q. State whether you have been in the country much of the time since then.

A. I have been in there every season, every summer.

Q. Are you familiar with the topography of the country? A. I am.

Q. Have you been in the so-called Shushana diggings? A. Yes, sir.

Q. When were you first in that country?

A. I was first in Shushana country in 1903.

Q. Were you there during last summer?

A. Yes, the greater part of the summer.

Q. Are you familiar with the circumstances attending the entry of an order by this Court on May 7, 1913, creating the White River precinct and recording district? A. Yes, sir.

Q. Where were you on that occasion?

A. Here in Cordova.

Q. At whose request was the order issued?

A. Mine. [231—209]

Q. Do you know the place designated as Wiley, Alaska? A. I do.

Q. Where is that metropolis?

A. That place is located at the mouth of Solo Creek.

Q. How large a place is it?

A. There are probably several cabins there now.



(Testimony of Robert W. Wiley.)

Q. How many people live there?

A. I suppose now there must be three or four.

Q. Was a recording office ever established there?

A. No.

Q. Do you know H. E. Morgan who was appointed recorder?     A. Very well.

Q. Do you know when he first arrived in the White River recording district?

A. In the summer of 1913.

Q. After May 7, 1913?

A. About the second day of September.

Q. That was at Wiley?     A. Yes.

Q. When did he first arrive in the district?

A. He arrived on the 20th day of July.

Q. How do you know that?

A. We left the canyon on the 16th and were four days going over.

Q. You accompanied him?

A. Yes, I was with him at the time.

Q. The canyon was where?

A. Canyon City, that is in the Yukon Territory—that is on the trail coming in.

Mr. LEEHEY.—That's all.     [232—210]

Cross-examination by Mr. DONOHUE.

Q. You say there was no recording district ever established at Wiley?

A. The order was issued for Wiley but there never has been any recording district there.

Q. Didn't Mr. Hamshaw act as recorder there?

A. That was over at the Island, six or seven miles away, North Fork Island.

(Testimony of Robert W. Wiley.)

Q. How far is that from the Shushana district?

A. About forty-five or fifty miles.

Q. How far is Wiley from the Shushana district?

A. About 35 miles; it would be about 42 miles to the Island and Wiley is about 35 miles.

Q. What part do you count from in this Shushana region?

A. You asked me how far Wiley was from the Shushana district—it is 35 miles.

Q. From the present town of Chisana?

A. Yes, sir.

Q. Or are you basing it from the mouth of Little Eldorado Creek?     A. No.

Q. You can make it in a day's travel?

A. Yes, a long day.

Q. Do you know of a miner's meeting electing Mrs. Hamshaw recorder there?

A. Yes, that was held at the North Fork Island.

Q. When?

A. About the tenth of July, about that, 9th or 10th.

Q. Don't you know of her accepting and recording notices? Do you know of records being filed as early as the 23d day of June with Mrs. Hamshaw?

A. No. [233—211]

Q. Did you ever see the books she kept?

A. No, I don't believe I have.

Q. Is that her handwriting? (Handing witness paper.)     A. What is this?

Q. I don't know— What does it purport to be?

A. A record of Mrs. Hamshaw's 23d day of June—that is Mullan townsite.

(Testimony of Robert W. Wiley.)

Q. That is her writing?

A. I don't know whose writing it is; I am not familiar with it—that don't amount to anything.

Q. When was this miner's meeting held?

A. The tenth day of July.

Q. You attended it?

A. Seven or eight men there.

Q. The record of that meeting shows here?

A. It ought to if that is the book.

Q. You know all about that book but don't know anything about the previous record of Mrs. Hamshaw?

A. I didn't know she ever had any.

Q. You are familiar with this book?

A. I am not, I don't know the book at all.

Q. You spoke rather sneeringly of the place called Wiley—you were instrumental in having that order made, fixing that place for recording?

A. Yes, I was.

Q. And at your request Judge Overfield fixed the headquarters at Wiley, near the mouth of Solo Creek?

A. Yes, that was to be his headquarters.

Q. You simply imposed on the Judge?

A. We didn't impose on the Judge; it was a matter of convenience to us there; we didn't want to send our papers to Forty Mile [234—212] to have them recorded; it was a matter of convenience.

(By Mr. LEEHEY.)

Q. You say you didn't want to send the papers to Forty Mile—had you been in the habit of doing so?

(Testimony of Robert W. Wiley.)

A. We always did so; all our papers went to Forty Mile and I didn't know any different until Judge Overfield advised me of the fact that that wasn't the place to send the papers.

Q. When did he do that?

A. Last spring, 7th day of May—I never knew any different.

Witness excused.

**[Testimony of Thomas Doyle, for Defendant.]**

THOMAS DOYLE, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. LEEHEY.

Q. What is your name?      A. Thomas Doyle.

Q. What is your occupation?

A. I have been mining and prospecting.

Q. How long have you followed that occupation?

A. Since 1898 regularly.

Q. Do you know what is commonly designated as the Shushana region in Alaska?      A. I do.

Q. Have you ever been there?      A. I have.

Q. When did you first reach that place?

A. The 26th day of June.

Q. Do you know a creek in there designated as Eldorado or Big Eldorado Creek? **[235—213]**

A. I do.

Q. Did you ever visit that creek?      A. I did.

Q. When?      A. On the 6th of July.

Q. In whose company?

A. McKinney and Gates and Nelson.

Q. Where were you living or camping or established at that time?

(Testimony of Thomas Doyle.)

A. At the mouth of Little Eldoraro, a tributary of Bonanza.

Q. State the circumstances, describe how you went over there and what you did?

A. We left Dawson, coming from Coffee Creek, a place on the Yukon, about 135 miles from Dawson and went by horses across country; we struck the White River at a point about 130 miles from the mouth, a place called San Pete, where we left Nelson, Schultz and Gates and from there we proceeded overland to Shushana.

Q. On this particular sixth day of July, describe your trip from your camp to Eldorado Creek—what day was it that you first went to Big Eldorado Creek?

A. The 6th of July.

Q. Describe your trip that day.

A. We left there in the morning some time and we staked Eldorado Creek; looked the creek over a little first, before Nelson located Discovery.

Q. Did you do any prospecting on that creek?

A. We did.

Q. Describe to the jury what was done?

A. We just had a pan and took a shovel and would naturally go around where you think it was the most likely looking place.

Q. Did you obtain prospects?

A. Yes. [236—214]

Q. Were they encouraging?      A. Yes, sir.

Q. State whether the prospects were such as to indicate that the creek beds, the ground there adjacent to it, were worthy of further exploration and de-



(Testimony of Thomas Doyle.)

velopment?     A. I think surely they were.

Q. Were any mining claims located there by your party that day?

A. Yes, we all located that day.

Q. Did you locate a claim?

A. I did, by power of attorney.

Q. What claim?     A. Number 4 Below.

Q. Is that claim involved in litigation?

A. Yes, sir.

Q. The cause now pending in this court?

A. Yes, I believe it is.

Q. Are you familiar with a claim on that creek designated as Number Two Below Discovery?

A. Yes, I was there at the time it was staked.

Q. Who staked it?     A. Gates.

Q. Do you know how he located it, whether for himself or a principal?

A. By power of attorney—I think he told me that.

Q. Did you see his location notice?     A. I did.

Q. Did you see his location monuments?

A. Yes, sir.

Q. State to the jury where this location notice was placed with reference to the location monuments and with reference to the different ends of the claim.

[237—215]

A. Gates put his notice on the lower center post.

Q. On what was that notice written?

A. On a piece of board.

Q. How was the notice placed there?

A. It was just on a rock and another rock on top of it.

(Testimony of Thomas Doyle.)

Q. On the flat ground? A. No, on a monument.

Q. What was the monument?

A. Built of rock  $2\frac{1}{2}$  or 3 feet high.

Q. Did you assist in the work of staking the claim?

A. I did.

Q. State whether you saw any corners established.

A. Yes.

Q. Describe the corners.

A. A willow post, about  $2\frac{1}{2}$  or 3 feet.

Q. Where were these willow posts obtained?

A. Right in the creek; we probably had to go a quarter or half a mile—wherever we could get willows.

Q. Were they green or dry? A. Green.

Q. Did you assist in preparing any of these corners? A. I did.

Q. State how the stakes were prepared.

A. We had to go and cut the stakes and got them prepared and put them up.

Q. How did you prepare the stakes? What length did you cut them?

A. Three feet about, I should judge.

Q. About how thick were they?

A. I don't know; I don't suppose over two inches or  $2\frac{1}{2}$ , probably.

Q. Were they peeled or hewn or what?

A. They were hewn off at the ends where we wrote on them. [238—216]

Q. Were they marked when they were set in the ground? A. Yes.

Q. How?

(Testimony of Thomas Doyle.)

A. Each claim, the upper corner stakes, etc.—upper and lower corner stakes.

Q. What method or instrument was used for marking?

A. Lead pencil.

Q. On the bark?

A. No, we kinder hewed them off at the top.

Q. Did you observe whether the various corners on #2 Below were all set?      A. Yes, sir.

Q. State whether you examined each corner.

A. No, I did not.

Q. Did you see each corner set?

A. I saw the stakes there but didn't examine them, didn't go up to them.

Q. Did you see any marks on any of the corners?

A. The corners were marked I know on the left limit—I looked at them.

Q. How were they marked?

A. I am not sure which limit; anyhow, it read Lower left corner stake of Big Eldorado No. 2,—Something to that effect; I couldn't remember exactly.

Q. You didn't go to each corner?      A. No.

Q. And didn't read the markings on each corner?

A. No.

Q. All this occurred when?

A. The 6th of July.

Q. Who did the various acts of location on this claim No. 2 Below [239—217] Discovery?

A. Mr. Gates.

Q. Did you know anything about the preparation

(Testimony of Thomas Doyle.)

of his location notice on this board—did you see him write it?

A. I didn't take notice; I know it was written on it that day, but I never took any particular notice of the location notice.

Q. Did you see him place it in position?

A. Yes, I saw him putting on the lower monument, center monument.

Mr. LEEHEY.—That is all.

Cross-examination by Mr. RITCHIE.

Q. In staking these claims, did all four of you travel together all the time?

A. We did, various places.

Q. You staked four claims together, the four men?

A. Yes, sir.

Q. Were each of you present at the time all the corners posts were set on all of them.      A. Yes, sir.

Q. You traveled together all day?      A. Yes, sir.

Q. What time did you get there that day?

A. Darned if I know—some time early in the morning.

Q. How far did you have to walk from your camp?

A. I don't think the way we went over three miles.

Q. What time in the day did you finish the staking?      A. We got back some time that evening.

Q. You were there from along early in the forenoon until past the middle of the afternoon?

A. Yes, it was evening when we got back.

Q. And at that time the four of you had staked four claims, each a [240-218] quarter of a mile long?      A. Yes.

(Testimony of Thomas Doyle.)

Q. And you worked together nearly the whole day?     A. Yes.

Q. You saw each man stake his claim and the other three men were with you when you staked your claim?     A. Yes, sir.

Q. You are sure it was the 6th of July?

A. Yes—as near as I can figure it was the 6th of July.

Q. Did you carry any calendar with you?

A. No.

Q. How do you fix the date—as men will keeping tab from day to day?     A. Yes.

Q. What day of the week was it?

A. I couldn't say.

Q. Where were you on the Fourth of July?

A. I must have been around the mouth of Little Eldorado; we were camping there.

Q. Were you staking claims between the 2d and 6th of July on some other creek?

A. I think we staked on the second.

Q. Where were you on the third?

A. I think we went over to Chicken—I know we did, with James.

Q. Any of those other men with you?

A. James and I think Nelson was along.

Q. You staked a claim on this 6th of July as attorney for Asa Markly?     A. Yes, sir.

Q. Did you file that notice for record?

A. I did.

Mr. LEEHEY.—We object to that—the testimony of the witness shows [241–219] that particular



(Testimony of Thomas Doyle.)

claim is involved in litigation in this court. Objection sustained as incompetent. Plaintiff excepts.

Q. Do you know how the date of your alleged location on the 6th of July reads, as to the date of recording?

Mr. LEEHEY.—We make the same objection, as incompetent, irrelevant and immaterial and improper cross-examination.

Objection sustained. Plaintiff allowed an exception.

Q. How much of the time were you with Gates while he was traveling around this claim setting stakes?

A. I couldn't say just the time.

Q. Were you with him when he set each of the corner posts? A. Not all; no.

Q. Which one, do you remember?

A. I think it was the left limit.

Q. Were you with him at the time he and Mr. McKinney testified that the monument was set between one and two? Were you present at that time?

A. When they were setting the monument?

Q. Yes.

A. I was on the creek and saw them working.

Q. Were you working with them?

A. I might help them a little while.

Q. You didn't take any notice what they put there? A. No.

Q. Did you go with Gates when he walked down the claim and paced it off to set the stake at the lower end?

(Testimony of Thomas Doyle.)

A. No, I was down at the lower end, coming up, I think.

Q. Were you with him when he built the monument there?     A. I saw him building it.

Q. Did you assist in building it?

A. Not very much; I might have put a rock or two on it.     [242-220]

Q. Did you see the notice he wrote?

A. I didn't read it very carefully.

Q. Did you see it?     A. Yes.

Q. Did he write it there, in your presence?

A. No.

Q. Was it written before he came over there?

A. I couldn't say.

Q. All of you brought some boards over there that had been written out, or partly so, before you left your camp in the morning?

A. I don't know—mine was. I know I had my own.

Q. Partly written?     A. Yes, sir.

Q. Do you know whether the location notice of Mr. Gates for Mr. Purdy was partly written or not?

A. I couldn't say.

Q. Did you see him writing?     A. I did.

Q. Were you standing where you could see just what he wrote?     A. No, I might have—if I paid particular attention to it I might but I never looked or observed it.

Q. Did you read it over after he had written?

A. I saw the signature.

Q. You didn't read the statements in it?

(Testimony of Thomas Doyle.)

A. No.

Q. You don't know at which point he undertook to launch the claim?     A. No.

Q. What was the monument?

A. A rock monument  $2\frac{1}{2}$  feet high, probably.

Q. Was it built of small rocks or large ones?  
[243-221]

A. Some of them were fairly good-sized rocks more than small or average run of rocks.

Q. Are there many large boulders on the creek?

A. Quite a few. They were pretty fair-sized boulders, some would probably weigh 100 pounds.

Q. As a matter of fact, were there more than three boulders in that monument?     A. Yes.

Q. Was there as many as six?

A. I would think so.

Q. How high was the top of the monument?

A. I should judge  $2\frac{1}{2}$  or 3 feet.

Q. And the board was on top of the monument and held down with a flat rock?     A. Yes, sir.

Q. Did you ever see it afterwards?     A. No.

Q. Did you ever see the notice afterwards?

A. No.

Q. Were you ever on the creek after that day?

A. Not until late in September.

Q. Who else was there at the time this monument was built and the notice placed there?

A. I think McKinney was near by.

Q. Anyone else?

A. No—I don't remember whether Nelson was or not right there.

(Testimony of Thomas Doyle.)

Q. Where did you get the stakes you cut up for corner stakes?     A. We got them on the Creek.

Q. Cut them on the ground?

A. No, we had to go below a little ways.

Q. There are no willows on the claims? [244-222]

A. No, not right there, not big enough for a stake—there might be some little low bushes.

Q. How extensive is the growth of willow there—just a fringe along the creek?     A. Yes, sir.

Q. How large are the largest willows growing on any of these claims?

A. I don't think over 3½ inches thick,—probably, not that much.

Q. You cut these willows some distance below and carried them up?     A. Yes.

Q. When did you do that?

Q. We had to go down below to cut them.

Q. I thought you said the willows were as large as 3½ inches on the creek?     A. That is below.

Q. I meant, how large the willows were that grew on these claims?

A. There are no willows at all on some of them, on Discovery, I don't think there is any, or One and Two Below.

Q. You would have to go some distance below?

A. Yes.

Q. How did you blaze the willows for marking?

A. We blazed off two sides.

Q. With a knife?     A. Yes, a pocket-knife.

Q. Peeled the bark off?

A. Peeled the bark off and a little of the wood.

(Testimony of Thomas Doyle.)

Q. So as to flatten the blaze?      A. Yes.

Q. You whittled them on two sides?

A. Yes, sir.

Q. Did you use any of those stakes for more than one claim?      A. No, I did not. [245—223]

Q. Do you know whether any of the others did?

A. The way we staked, we used one stake for two claims—yes, that is the way we staked.

Q. You only saw the corner stake on the left limit?

A. I think it was the left limit, it was the only one corner stake; I didn't go up close to that,—I saw them all but didn't go close to them, wasn't close to them.

Q. Did you notice the description on them, on that?

A. Yes, I think it was Number one, corner post, left limit, Big Eldorado, something to that effect.

Q. Did you afterwards see any of those other stakes of that claim?

A. After the 6th of July?

Q. Yes.      A. No.

Q. You have never visited the creek since then?

A. I visited the creek but didn't pay any particular attention to that claim.

Q. You didn't go on the claim?

A. I walked by it.

Q. Who were in your party that day?

A. McKinney, Gates, Nelson and myself.

Q. You staked just four claims?      A. Yes.

Q. Where did you get the hunch to go on Big Eldorado that particular day?



(Testimony of Thomas Doyle.)

A. We were traveling all over the country.

Q. When you started out that morning it was with the specific intention of going to Big Eldorado and locating at least a claim a piece? A. Yes, sir.

Q. That is what you took those boards for, with the markings [246-224] partly written on them?

A. Yes.

Q. Had you any information about Big Eldorado before that time?

A. We were told about it by James; he had been over there and told us the creek looked pretty good.

Q. You had never been over there before that day?

A. No,

Q. How much time did you spend on the creek before you began to stake claims?

A. We were over there probably three or four hours.

Q. You didn't begin to stake until afternoon?

A. No.

Q. Did you go up and down the creek several times?

A. We went up and down—I don't know about several times.

Q. There is no possibility of your being mistaken about the day?

A. I don't think so; absolutely none.

Q. It could not have been the 7th or the 5th?

A. I don't think so.

Q. Did you notice where the discovery notice or monument was placed on each one of these four claims? A. Yes, they were all in the creek bed.

(Testimony of Thomas Doyle.)

Q. The initial monument?

A. The initial monument.

Q. Where was it on Discovery?

A. It was pretty well to the right limit, I think, of the creek bed.

Q. You understand I am referring to the notice of location—where was the notice of location posted on Discovery claim?     A. Pretty well to the left limit.

Q. On which end?     A. On the upper end.  
[247—225]

Q. Right on the boundary, on the end line?

A. Yes, sir.

Q. And where was the notice posted on Number One Below?

A. It was on the lower center post of Discovery.

Q. That is beyond the lower end of Discovery?

A. Yes, sir.

Q. Or the upper end of Number One?

A. Yes, sir.

Q. Do you remember how that notice read?

A. No.

Q. Do you know which way it made the claim strike,—up or down?

A. No, I didn't read the notice myself.

Q. The notice of location of Number Two, then, was two claim lengths from that?

A. Yes, it was put on the lower stake, the lower monument.

Q. The Discovery was placed on the upper end, No. 1 was placed on the upper end and No. 2 was placed on the lower—two claim lengths away?

A. Yes, sir.

(Testimony of Thomas Doyle.)

Q. Where was the location Notice of Three posted?     A. On the same monument.

Q. Where was 4 posted?

Mr. LEEHEY.—We object to any testimony concerning No. 4.

Objection sustained. Plaintiff allowed an exception.

Q. Describe how those two notices were placed on that claim between Two and Three.

A. They were both put under rocks.

Q. Right together?

A. No, I don't think they were right together.

Q. They were on the same monument?

A. They were on the same monument. [248-226]

Q. How high was that monument?

A. About, I judge, three feet, 2½ or 3.

Q. Built of large boulders or small boulders?

A. Fairly good-sized rocks.

Q. Were both of those notices written on boards?

A. Yes.

Q. All your notices that day were written on those small boards taken from a milk case or something of the kind.

A. Yes, sir.

Q. You say those two boards were not right together?     A. No.

Q. Was one placed higher than the other?

A. Yes, one was placed below the other, I think.

Q. Is it not a fact that you prepared the notices to locate One and Two before you came over, 1 and 2 Above Discovery before you came over there?

(Testimony of Thomas Doyle.)

A. No, sir.

Q. Did you locate anything above Discovery that day?     A. No, sir.

Q. Just those four claims?     A. That is all.

Q. Five claims—Discovery and four Below?

A. Yes.

Q. Which of the notices were prepared or partially prepared before you left camp?

A. I had mine partly written, that is, it was filled out—all I had to do was to put in the date and the number of the claim.

Q. You didn't have the number filled out?

A. No.

Q. You didn't know what number it would be?  
[249-227]     A. No.

Q. Do you know how far Number Three was filled out?     A. No.

Q. That was the one which McKinney located for Schultz—you don't know how far he had his notice written out?     A. No.

Q. Do you know to what extent Gates had the notice for Purdy written out on Number Two?

A. No.

Q. How about Number One?

A. I don't know about any of them.

Q. Did you know before you went over there which of you was going to locate any particular claim?     A. No.

Q. How did you arrive at the division of the ground when you got there?

A. Some of the claims we staked we drew straws

(Testimony of Thomas Doyle.)

for and some we had to suggest among ourselves which one.

Q. Just by agreement?

A. Just by agreement.

Q. Were all those green willows that you cut?

A. Yes, all green willows.

Q. With leaves on them??      A. Yes, sir.

Mr. RITCHIE.—That's all.

Witness excused. [250—228]

**[Testimony of Nels P. Nelson for Defendant.]**

NELS P. NELSON, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. LEEHEY.

Q. What is your name?      A. Nels P. Nelson.

Q. What is your business?      A. Miner.

Q. How long have you been in Alaska and the Yukon Territory?      A. Sixteen years.

Q. Have you ever been in the Shushana diggings?

A. Yes, sir.

Q. When did you first go there??

A. I went there in March, 1913.

Q. Do you know the G. L. Gates, who has testified in this action?      A. Yes, sir.

Q. Are you familiar with the creek in the Shushana region known as Big Eldorado Creek?

A. Yes.

Q. Do you know the location of the important claims on that creek?      A. Yes, sir.

Q. I believe you staked Discovery claim on that creek?      A. Yes, sir.



(Testimony of Nels P. Nelson.)

Q. When did you do so?

A. On the 6th of July, 1913.

Q. In whose presence?

A. McKinney and Gates and Doyle and myself.

Q. Do you know the location of the claim designated as Number Two Below Discovery on Eldorado Creek?     A. Yes, sir.

Q. Do you know when that was staked?

A. Yes. [251—229]

Q. When?

A. It was staked the same date, the 6th of July.

Q. By whom?     A. Gates.

Q. Did you observe the location of the monuments on that?     A. Yes, helped build them.

Q. What do you know with reference to the stakes or monuments marking the corner of that claim?

A. I saw the corners there; I didn't go up to them.

Q. How were they marked?

A. I don't know; I saw the corners were up there; there was willow stakes standing up there.

Q. What did the monument consist of?

A. The monument consisted of rocks and the corner stakes were willow stakes.

Q. Did you observe any location notice posted on the claim designated as Number Two Below Discovery?     A. I did.

Q. Did you see it posted?     A. Yes, sir.

Q. By whom?     A. Gates.

Q. On what date?     A. The 6th of July.

Q. At what place on the claim was this location notice posted?

(Testimony of Nels P. Nelson.)

A. It was posted on the lower center end stake.

Mr. LEEHEY.—That's all.

Cross-examination by Mr. RITCHIE.

Q. You were there when that was posted?

A. Yes, sir. [252—230]

Q. Who else was there?

A. McKinney and Doyle and Gates.

Q. All of you were there?

A. We were on the creek, yes.

Q. Were you standing right by when the notice was put there?

A. No, I was helping him build the monuments, but was there when he put it there.

Q. Were you there just at the time the notice was put on the monument? A. Yes.

Q. Did you see Gates write it?

A. I did. I saw him write part of it.

Q. He brought it with him partly written?

A. I couldn't testify as to that—I saw him write there.

Q. Did you read it after he wrote it? A. No.

Q. You don't know what was in it, then?

A. No, I do not.

Q. You simply know he wrote something you assumed to be a notice and placed it on the monument?

A. Yes, sir.

Q. That was at the lower center end stake?

A. That was at the lower center end stake.

Q. Of Number Two? A. Yes.

Q. Do you know where the notice on Three was?

A. It was on the same monument.

(Testimony of Nels P. Nelson.)

Q. On a different board?      A. Yes.

Q. The two were put in right together?      [253—  
231]

A. Yes, they were both on the same monument.

Q. Where was the location notice placed on your discovery?      A. On the upper center end stake.

Q. And were you present when the notice was posted on #1 Below?

A. I think I was around there; I don't know that I was right there when they posted it; after I staked my claim I took a pan and went panning.

Q. Did you see the notice on Number One after it was posted?      A. No, I did not.

Q. Do you know which end of #1 it was posted on?

A. Yes, I think it was posted up on the lower end of my claim.

Q. It was on a line between Discovery and One Below?      A. Yes.

Q. On the upper end of One?      A. Yes.

Q. Just a claim length below your notice?

A. Yes.

Q. And Number Two was posted two claim lengths below that?      A. Yes, at the lower end of One.

Q. Two and Three were on the same monument, together?      A. Yes.

Q. Do you know where #4 was posted?

A. It was posted on the lower end of #4.

Q. How do you know?

A. I saw it there; I was there when they posted it.

Q. It was two claim lengths away from #2, then,

(Testimony of Nels P. Nelson.)

the notice of Two?     A. Yes.

Q. There was no notice then placed on the boundary between 3 and 4?     A. I don't think so.

Q. How far down the creek does Number 3 go—does it go to the canyon?     [254—232]

A. No, quite a ways above.

Q. Does Number 4 reach the canyon?     A. No.

Q. You are sure Four does not extend into the canyon?     A. Yes, sir.

Q. How far is it from the upper end of the canyon?

Mr. LEEHEY.—We object to that as immaterial.

Objection sustained; plaintiff allowed an exception.

Q. Did you see any of the stakes on Number Two?

A. I saw all of them.

Q. Were you present when they were set?

A. I was right there on the ground; yes.

Q. You went around with Gates as he set each one of them?

A. No, you can see all the stakes from the creek bottom.

Q. You didn't go up to where they were set, then?

A. No.

Q. Did you see any of them at close range after they were set?     A. I saw all of them, yes.

Q. Did you go up close to them or see them from where you stood?

A. I see them from the creek bottom; I saw them setting them.

Q. Where were you working after you staked your

(Testimony of Nels P. Nelson.)

own claim—you say you were panning in the creek?

A. Yes.

Q. Whereabouts? A. Right on Discovery.

Q. And Mr. Gates was working from a quarter to a half mile away on Number Two?

A. No, McKinney was staking these claims.

Q. Wasn't Gates staking Number Two?

A. No, not right then; he was pacing it off, I guess—he hadn't put up any stakes yet. [255—233]

Q. I think you said you saw Gates when he was there setting the corners, the corner stakes on Number Two? A. Yes, sir.

Q. You were panning at the time? A. Yes, sir.

Q. You were then about half a mile from him?

A. No, I was on the lower end of Discovery.

Q. It is 1,320 feet to the upper end of Two?

A. Yes.

Q. That is a quarter of a mile? A. Yes.

Q. And another quarter of a mile to the lower end of Two? A. Yes.

Q. So he was from a quarter to half a mile away when he set these stakes, these corner stakes, Gates was? A. I suppose he was; yes.

Q. Did you see these stakes after he set them any nearer than from where you were panning?

A. Yes, I was on the claim helping him build the monument.

Q. You went around and examined the corner stakes afterwards?

A. No, I didn't go around. I could see them from the center of the creek.



(Testimony of Nels P. Nelson.)

Q. How close did you get to the upper stakes, or either of them?

A. I got within about 300 feet of them.

Q. Did you get close enough to examine those stakes and see whether there were any markings on them? A. No, I did not.

Q. Were these claims staked in order, one of them completed before they started on the next one, or were you working on all five of them together? [256—234]

A. I don't think McKinney's claim was completed when Gates had his staked.

Q. He and Gates were working at the same time?

A. Yes, sir.

Q. And Gates completed his first? A. Yes.

Q. You had in the meantime, prior to that, completed the staking of Discovery and begun panning on it?

A. I staked Discovery and then they drew lots, who should stake the next claim in succession.

Q. They all helped stake Discovery?

A. Yes, sir.

Q. And then McKinney and Gates went to work on #1 and 2? A. Yes.

Mr. LEEHEY.—That is all.

Cross-examination by Mr. RITCHIE.

Q. You are absolutely certain as to the location of each of these original location notices?

A. Yes, sir.

Q. That Discovery was at the upper end?

A. Yes, sir.

(Testimony of Nels P. Nelson.)

Q. And the location notice of One Below was at the upper end of that claim?     A. Yes, sir.

Q. And the location notice of #2 was at the lower end of that claim?     A. Yes.

Q. And the location notice of #3 was on the same monument, at the upper end of Three?

A. Yes, sir.

Q. There is no possibility of your being mistaken [257—235] about any of those location notices?

A. No, sir, I don't think so.

Mr. RITCHIE.—That is all.

Witness excused.

Mr. LEEHEY.—I would like to have Mr. Finnegan sworn to give testimony concerning the records in the Shushana, without prejudicing himself to address the jury, of course not to comment upon his own testimony.

Mr. DONOHOE.—We have no objection.

**[Testimony of J. J. Finnegan, for Defendant.]**

J. J. FINNEGAN, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. LEEHEY.

Q. What is your name?     A. J. J. Finnegan.

Q. Were you in the Shushana region of Alaska last summer?     A. I was.

Q. Do you know H. C. Morgan?     A. Yes, sir.

Q. Did he hold any official position, serve in any official capacity, last summer?

A. He served as United States Commissioner and district recorder.

(Testimony of J. J. Finnegan.)

Q. Did you have any duties to perform under him, in connection with his office?     A. I did.

Q. In what capacity?

A. I think the day before Morgan left the diggings, he requested that I take his records and act as his deputy, which I did.

Q. Are you the J. J. Finnegan who was afterwards appointed Commissioner [253—236] and recorder for that district?     A. I am.

Q. And how long did you serve in that capacity?

A. Well, I served from the date of receiving the notice from Judge Brown, that was October 21st—I executed my bond on that date; I served until the 14th day of November, when Mr. Dimond came in and I turned over the office to him.

Q. State the facts as to who had the custody of the records prior to the time you were appointed and subsequent to the second day of September—prior to the time you executed your bond.

A. I had the custody of the records.

Q. Are you familiar with the record books of that district?     A. I am.

Q. There are certain books here in court purporting to be the official record books of that district. You may make a statement in your own way as to matters within your own knowledge as to how those books were received and what portion of them were what may be designated as the official books or upon the official form prescribed by the government for the use of recorders. When did you first have anything to do with the office of recorder?

(Testimony of J. J. Finnegan.)

A. September 2d, 1913.

Q. And state the facts as to who took possession of the records then.

A. I took possession of certain records at that time..

Q. What do you mean by certain records?

A. Certain of the records that are present here in court.

Q. Did you take possession of a part or all of the records of the district that were there at that time?

A. I took possession of a part.

Q. There were records of that district you did not take possession of? [259—237]

A. There were.

Q. What records were those?

A. There was one book of records, I believe, at the time I took office which contained about 16 or 17 pages of recorded notices or recorded instruments, and Morgan was going over to the White River with several parties who had property over there on it; they desired to do their annual representation work and he desired to take a small volume, probably five or seven notices, with him and record the necessary work over there and then send the book back to me, which he did.

Q. Was that place he was going to also within the White River recording district? A. It was.

Q. Was that book returned to your office?

A. It was.

Q. Were there any other records of the district you did not take possession of? A. There was.

(Testimony of J. J. Finnegan.)

Q. What other records?

A. There was the original record book of the emergency recorder, Fred Wahn; at the time Morgan turned the records over to me, I didn't know of its existence; I had never examined the records in respect to that before then and knew nothing of it; and a few days after Morgan's departure several parties in the diggings asked me if I had all the records and I told them I did not, that there was one book that was missing, and I referred them to the small book Morgan had with him, which contains mostly White River instruments, pertaining to locations over on the White River, copper locations, and my informants then told me that there was still another book that was not in my possession and they called my attention to Wahn's record and I told them [260—238] I didn't have it and knew nothing of it, but when Morgan returned me the book I knew he took, he wrote me a letter and stated he had this original book of Wahn's in his possession and was keeping it for future reference, and I immediately then wrote Morgan that he should not do so, that it belonged to the office and he should return it, and later on I wrote Waller in Seattle to the same effect, and I understand when the Judge of this court was out in February, he received that record from Waller, and it is here present now.

Q. Did that book contain anything that had already been transcribed into the other book?

A. To the best of my knowledge, I have examined them and I think Waller's original records are tran-



(Testimony of J. J. Finnegan.)

scribed verbatim into Morgan's first book of record.

Q. In the book that remained in your possession?

A. In the book that remained in my possession.

Q. Who had possession of the records of the White River recording district with that exception from the 2d of September until you surrendered the office?     A. I did.

Q. Where were they?

A. On Wilson Creek until September 22d and on that day I moved to the Town of Chisana.

(By the COURT.)

Q. Who was Wahn—was he acting under Morgan, acting after Morgan was appointed Commissioner of the White River precinct?

A. No, he was elected by the miners on I think July 11th as emergency recorder.

Q. How long did he act?

A. I believe for about ten days, until the arrival of Mr. Morgan.

Q. Then he didn't act under Morgan? [261-239]

A. No, he turned his records over to Morgan and Morgan re-entered his records into his volume.

By the COURT.—I desire to say at this time that in the latter part of January of this year I was in Seattle and was called on the phone by Mr. Waller, whom I then didn't know; he told me he had an office there and desired to see me on certain matters concerning the Shushana. I called at his office and he told me he had a small book, which he showed me, that a man by the name of Wahn kept there prior to the time Morgan went in and he, Waller, had been acting as

(Testimony of J. J. Finnegan.)

deputy under Morgan. Morgan was then east somewhere—at any rate, was not in Seattle. I didn't examine the book, but I told Mr. Waller to immediately send it by registered mail to the clerk of this court at Valdez and I believe it has since been received. Mr. Waller did this and the book was sent to the clerk and is now in his custody.

Examination by Mr. LEEHEY (Continued).

Q. Is the book which you have described as the Wahn records and to which the Court has referred now in this courtroom in the custody of the clerk?

A. To the best of my knowledge it is; I never saw it before coming to Cordova.

Q. Describe the character of the books in which the records were made and kept at the time you took the office?

A. This is the Wahn record book which I had never seen before. This book is marked S. E. Ledger, about 6 inches long by 4 wide and is called the Wahn record book; what appears here as Volume One of the White River record is about nine inches wide by 13 or 14 long.

Q. Is it the book provided by the government for that purpose? [262-240] A. It is not.

Q. What is it?

A. It is a common, ordinary ledger-book. Volume One contains about 300 pages; Volume Two is about the same dimensions and contains about 150 pages.

Q. You mean an ordinary journal?

A. I think it is a journal; the first is a ledger and is so marked; Volume Two, I believe, is a journal.

(Testimony of J. J. Finnegan.)

There is no Volume Three of the records of the White River precinct; at certain times the Wahn records were called Volume Three. Volume Four is a common, ordinary book, unlined, about the dimensions of Volume 1 and 2, containing 125 pages; Volume 5 is a small journal about 5 by 8, containing 225 pages, of which 87 contain record matter, mostly all pertaining to quartz locations on the White River and its tributaries; Volume 5 is the book Morgan took with him when he left the office—took over to the White River and later returned to me.

Q. Are any of these books on the official form provided by the Government? A. They are not.

Q. Were those books you have just described received by you from Mr. Morgan, with the exception noted? A. Yes, sir.

Q. Do they include all you have received from Mr. Morgan? A. Yes, sir.

Q. What was the condition of the office with reference to documents having been fully recorded at the time you took possession of the office?

A. At the time I took possession from Mr. Morgan there was between 150 and 180 unrecorded instruments. [263-241]

Q. Why were they not recorded?

A. The record books Morgan possessed at that time were completely filled, with the exception possibly of one or two pages in certain books, and I didn't care to enter any in them.

Q. There were no other books available for record purposes? A. None in the country.

(Testimony of J. J. Finnegan.)

Q. When were the books received?

A. I received two volumes similar to this one called Volume 7 of the White River Precinct on October 2d, thirty days after I took over the office.

Q. In the meantime state what you had done with reference to recording instruments.

A. I had received instruments filed for record and had so marked them and noted them, and where parties requested it I gave them receipts for their papers, to give them something to show they had filed the instruments for record.

Q. Is that Volume 7 on the form prescribed by the Government?     A. Well, I don't think it is.

Q. You received it from whom?

A. I received it from the clerk of the court, Third Division.

Q. Do you know whether any of the other record books you have described were furnished by the clerk of the court?     A. The Morgan records?

Q. Yes.

A. No; at the time I took over the office from Morgan and for 30 days thereafter there had never been anything whatsoever received from the clerk's office in the way of furnishing the Commissioner or recorder with supplies.

Mr. LEEHEY.—That is all. [264—242]

Cross-examination by Mr. DONOHUE.

Q. Volumes 1, 2 and 4 you have testified to are well-bound books, are they not, securely bound?

A. I think they are.

Q. You are attorney in this case for the defendant?

(Testimony of J. J. Finnegan.)

A. I am.

Q. All the records in any manner pertaining to this suit are contained in Volume One, are they not?

A. I don't think so.

Q. What ones are they contained in?

A. I think the defendant's papers were filed with me when I acted as recorder and they are entered in Volume 6—I mean the plaintiff's.

Q. All the records in any any manner pertaining to the defendant's right to the land in controversy are recorded in Volume One, are they not?

A. I think so.

Q. You are positive of that fact? Examine the books carefully. A. Yes, they are.

Q. There were twenty pages left in Volume One after the last instrument of the defendant, in any way connected with this case, was recorded? It is a fact, is it not, that the last instrument was recorded on page 280, the so-called power of attorney?

A. Yes.

Q. There are three hundred pages in that book?

A. Yes.

Q. There were no instruments connected with the defendant's title to the land in controversy unrecorded when you took charge of the office?

A. No, sir. [265—243]

Q. And the only book of record that in any way concerns the defendant's alleged title to the property in controversy is contained in Volume One?

A. Yes, sir.

Q. And that is a well-bound, substantial volume?



(Testimony of J. J. Finnegan.)

A. Yes, sir.

(By Mr. LEEHEY.)

Q. Your testimony does not include the proof of labor filed on this claim?      A. No, sir.

Mr. LEEHEY.—Defendant now offers a certified copy of the order of this court entered May 7, 1913, creating the White River Precinct and Recording District, Third Division, Territory of Alaska, and the order appointing Mr. Morgan Recorder.

Admitted without objection, marked Defendant's Exhibit 5, attached hereto, and made a part hereof.

Mr. LEEHEY.—The defendant will also offer in evidence a certified copy of the proof of annual labor, including a number of claims, this one among others. The defendant does not regard this as an issue or material in this case, but we offer it for what it may be worth; the copy is certified by the clerk, the record of the White River district or at least this portion being now in the custody of the court and being the same as though certified by the district recorder.

Mr. DONOHOE.—To which offer plaintiff objects on the ground that when the witness McKinney was on the stand—he made this affidavit—on an objection by defendant, we were precluded from cross-examining him as to the assessment work and my remembrance of it is that counsel then stated he did not propose to put in any proof on assessment work, and on that statement the Court sustained the objection. [244—266].

By the COURT.—I understand that the objection

(Testimony of J. J. Finnegan.)

to your further examination was on the ground that it was not proper cross-examination; at that time there was no testimony in on that subject.

Mr. DONOHOE.—That being the case, Mr. McKinney having sworn to this, we ask that he be again placed on the stand so that we can complete our cross-examination.

By the COURT.—I think this is competent testimony by statute and is made *prima facie* evidence of the facts therein stated.

Objection overruled and request denied. Plaintiff allowed an exception to the ruling.

Proof of labor admitted as Defendant's Exhibit #6. Copy is attached hereto and made a part hereof.

Witness excused.

Defendant rests.

**[Testimony of J. J. Ford, for Plaintiff (Recalled in Rebuttal).]**

J. J. FORD, recalled as a witness for the plaintiff in rebuttal, testified as follows:

Direct Examination by Mr. DONOHOE.

Q. At the time of the location of the Surprise Fraction, had there been any work done on that ground by way of assessment work or development work upon it? A. No, sir.

Q. How long after—state the date—the location of the Surprise Fraction and the ground embraced within it did anyone, other than yourself and Mr. Sutherland, come upon that land to do any [267—245] assessment work or development work?

(Testimony of J. J. Ford.)

A. September second.

Q. Who was it that came there that day?

A. McKinney.

Q. Have you in your possession a diary, kept of your transactions and observations in connection with the Surprise Fraction, commencing and including the second day of September and ending about the 7th or 8th of September?

A. I have notes I made there on the ground.

Q. Notes made at the time?      A. Yes, sir.

Q. Each day?      A. Yes, sir.

Q. Will you produce those notes with relation to the assessment work? (Witness does so.)

A. May I explain these notes?

Q. Yes.

A. Part of the time I was up there it was raining and the book would get wet and I had some writing paper and I carried that in my pocketbook, made my notes there, and afterwards, at the camp, I copied it into this book. I think I wrote on the paper first—I think I wrote the notes on the paper and copied it in here after.

Q. When did you copy it in that book?

A. About the 7th or 8th of September.

Q. You copied them from the memoranda you made on the particular days?

A. I did, and I know they are exact.

Q. Now, turning to your notes on the second day of September, state how much work was done upon the land in controversy by Mr. McKinney [268—246] or other person, other than yourself.

(Testimony of J. J. Ford.)

Mr. LEEHEY.—Defendant objects to this testimony as incompetent, irrelevant and immaterial, if it is offered for the purpose of disputing the performance of the annual labor; that question cannot possibly be involved in this case. The only purpose of filing our certificate of proof of annual labor is simply to show the good faith of the parties and continued exercise of acts of ownership over the property. The question of annual labor is not in issue in this case according to our contention, their location having antedated January 1, 1914, and no possible forfeiture could occur before that time. Objection overruled. Defendant allowed an exception.

Q. Who appeared upon this claim on the second day of September to do assessment work?

A. McKinney.

Q. Alone? A. Yes, sir.

Q. Were you upon the claim all that day while McKinney was there? A. I was.

Q. State what work he did by way of assessment upon that day.

A. He went down about 300 feet below our initial monument and started a cut in the bank.

Mr. LEEHEY.—This all goes in under the same objection.

By the COURT.—Yes, sir; and exception is allowed.

Q. How many hours did he work on that day?

A. Between five and six hours.

Q. Did he leave the premises before you did that day? A. He did.

(Testimony of J. J. Ford.)

Q. That was the second day of September?

A. That was the second day of September.

Q. On the third day of September, did McKinney come upon the [269—247] property?

A. He did.

Q. Alone?      A. He came on the property alone.

Q. Did he do any assessment work on that day?

A. He did.

Q. Were you there before McKinney came on the property?      A. I was.

Q. Did you remain until after he had left the property?      A. I did.

Q. How many hours did he work that day?

A. He worked five to seven hours.

Q. Was there anyone else with him that day working?      A. There was.

Q. Who?

A. There was a gentleman working on McKinney's claim, on One Below, that came down later and joined him that day.

Q. How many hours did the man who joined him work?

A. He worked about four hours, three or four hours.

Q. Anybody else work on there with McKinney that day?      A. No, sir.

Q. On the fourth day of September, were you there before McKinney came?      A. I was.

Q. Did you remain there until after he left?

A. I did.

Q. Did McKinney do any work on that claim that



(Testimony of J. J. Ford.)

day? A. He did.

Q. How many hours?

A. About seven or eight,—not more than that.

Q. Was there anybody else with him? [270—248]

A. This gentleman, I was trying to remember whether he came down with him or joined him there later—I know he worked with him that day again.

Q. The same man that worked with him the day before? A. Yes, sir.

Q. How many hours did that gentleman work?

A. He worked probably four hours, not any more.

Q. On the 5th day of September, did McKinney show up? A. No, sir.

Q. Did anybody else show up? A. No.

Q. You were there all day? A. I was.

Q. On the 6th day of September, were you there then? A. I was there on the 6th, yes.

Q. Did McKinney show up that day?

A. No.

Q. Did anybody else?

A. No; he took his tools home on the night of the fourth—may I correct one statement?

Q. Yes.

A. On the 2d this gentleman that was working on One Above came down to work—about half a day on the second.

Q. How many days' work for one man did Mr. McKinney of his associates or the men who were with him work upon the ground in controversy from the time Sutherland located the claim up to and includ-

(Testimony of J. J. Ford.)

ing the sixth day of September?

A. Not more than five days.

Q. Five days for one man?

A. Yes, sir; that is allowing good time. [271—249]

Q. What was the going wages of that camp for that kind of work at that time? A. \$12.50 a day.

Q. That would be \$62.50 worth of work?

A. Yes, sir; \$62.50 worth of work.

Q. You were there each day?

A. I was there each day. Mr. Schultz was down in the cut an hour and he might have used a shovel during that hour—I don't think he did, and he went back down where he was working below.

Cross-examination by Mr. LEEHEY.

Q. You said you were on this property prior to the 30th of August?

A. I wasn't on the Surprise Fraction prior to that? You mean we hadn't located it or I had not been on it?

Q. Were you ever on it prior to August 30th?

A. Yes, I was up and down that part of the creek.

Q. When were you first on the property?

A. That day we came over there; it seems to me it was somewhere around the 20th to the 23d. I am not very sure of that date.

Q. How long were you there that day?

A. I should think perhaps an hour, or perhaps two hours.

Q. When were you next there?

A. It might have been a day or two later that I

(Testimony of J. J. Ford.)

was over there again.

Q. How long were you there the second time?

A. I was there probably between an hour and two hours, up and down that part of the creek—not on that claim.

Q. When were you there the next time?

A. To the best of my recollection the next time was when I went down with Sutherland on the 30th.

Q. To locate it? [272—250]      A. Yes, sir.

Q. Then you were there twice before you located the ground on August 30th?

A. Yes, sir, I believe I was.

Q. Not more than an hour or so, or in that vicinity, each time?

A. Not more than an hour or two hours. I don't remember the exact time.

Q. You claim to have a cut on that property 40 feet long by about 4 feet wide?

A. The cut put in there is 45 feet long, as I remember, somewhere about 2 to 2½ feet deep and that wide, a little wider.

Q. What are the dimensions of that again?

A. About 45 feet, as I remember, long.

Q. And about how deep?

A. 2 or 2½ feet deep—I think it is full 2½ feet deep and 2½ feet wide.

Q. Did you ever see McKinney's cut?

A. Yes, sir—we had another cut besides that one.

Q. Who had?      A. We had.

Q. You had a smaller cut besides that?

A. About 18 feet long, yes, and deeper—trying to get rim rock.

(Testimony of J. J. Ford.)

Q. McKinney claims a cut 40 feet long and  $41\frac{1}{2}$  feet deep and about the same width?     A. Yes, sir.

Q. Has he such a cut?

A. He has a cut between 35 and 40 feet, yes, and about that depth.

Q. About  $41\frac{1}{2}$  feet deep?

A. Yes, I think it would be, on an average.

Q. Yours is only about two feet deep?

A. Yes; I was working in the creek bottom and hit this frost, and [273—251] rocks in it and it was hard to make progress, and boulders and stuff, and McKinney was working in a bank of fine wash, a little bit harder than throwing sand up.

Q. You have no knowledge of the number of days' work that might have been done there by somebody on behalf of the defendant prior to the time you came there, August 30th?

A. There was no sign of any work there—I was up and down the ground several times looking.

Q. It has a gravelly creek bed?

A. That is a gravel country; yes.

Q. And there is how much water flowing in the creek that season?

A. About a sluice-head when I was there.

Q. Do you know anything about the flow that was there subsequent to the 6th of July?

A. It doesn't show a very heavy flow.

Q. You were not there until about the 20th of August?     A. No.

Q. And therefore have no personal knowledge what work might have been done on the ground prior to that time?

(Testimony of J. J. Ford.)

Mr. DONOHOE.—We object to that; McKinney testified he was not there working on the ground prior to the time Sutherland made his location.

Objection overruled. Plaintiff excepts.

A. I have every knowledge that a man could have; I went over the ground, went up and down and looked it over for stakes and work; it isn't a country of big timber, is not covered very thickly with brush.

Q. The substance of it was that you made up your mind there was no work done before you came there?

A. Yes.

Q. And you reached that conclusion from your surface examination [274—252] of it, but you don't know it from personal knowledge, do you?

A. I wasn't there before then.

Q. And therefore don't have personal knowledge of what work might have been done prior to August 30th?

A. They couldn't have done any without it showing.

Q. But you didn't have any personal knowledge of it? A. No.

(By Mr. DONOHOE.)

Q. You made a careful examination of that property, did you, on or about the 30th or 31st of August, to see whether there had been any work previously done on the ground? A. Yes, I did.

Q. In regard to that place where McKinney was working, what did McKinney say to you in regard to coming over where he was working so as to make a big showing or anything to that effect?



(Testimony of J. J. Ford.)

A. He came to the cut, where I started to cut the creek bottom, and looked over it and said, "Say, kid, why don't you come over to the bank where it is easy shoveling and make a showing?" and I told him I was "doing all right where I am."

Mr. RITCHIE.—We wish to make an objection to the sufficiency of this affidavit of annual labor and therefore ask the Court to open the case for that purpose, and I want to call the Court's attention to the fact that it does not comply with the requirements of the statute, and is insufficient for showing annual assessment work or anything else; the affidavit is insufficient in at least two particulars.

By the COURT.—I don't think it is necessary to open the case—it was admitted without objection. Plaintiff excepts to ruling.

Witness excused. [275—253]

**[Testimony of O. A. Tucker, for Plaintiff (Recalled in Rebuttal).]**

O. A. TUCKER, recalled as a witness in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. RITCHIE.

Q. When were you last on claim #2 Big Eldorado Creek in the Shushana district?

A. The 16th of September.

Q. How long was that after your last previous visit?

A. I was there on the first and then on the 16th.

Q. You were there twice?      A. That is all.

Q. On the 16th did you go around and examine the

(Testimony of O. A. Tucker.)

stakes and monuments at all of the claim known both as #2 of defendant and plaintiff's Surprise Fraction?

A. I knew it as the Suprise Fraction.

Q. Did you examine the monuments or stakes at all on the 16th of September?

A. Yes, I made an examination of the stakes and the corners to see if there was any evidence of any location by Purdy or by Gates.

Q. State what examination you made and what you found, if anything.

Mr. LEEHEY.—We object to that as not rebuttal.

By the COURT.—Didn't you testify when you were on the stand before in this case that you examined those four willow posts or stakes around #2 Below and they had no markings on them that you could see or read?

A. I don't think I was asked that question—I wasn't asked that particular question, as I recall it.

Objection overruled. Defendant excepts.

A. I have made an examination of those four stakes to see if I had been mistaken about the markings—made a careful examination [276—254] to see whether there was any markings on them and I couldn't discover any markings.

Q. This was on the 16th?

A. This was on the 16th.

Q. Did you find anything, or any evidence that there has been markings?

A. I did not.

Witness excused.

[Testimony of Wm. M. Hertsberg, for Plaintiff (in Rebuttal).]

WM. H. HERTSBERG, a witness called and sworn in behalf of the plaintiff, in rebuttal, testified as follows:

Direct Examination by Mr. RITCHIE.

Q. What is your name?      A. Wm. M. Hertsberg.

Q. Where do you reside?      A. McCarthy.

Q. How long have you resided at McCarthy?

A. About two years.

Q. What is your business?      A. Miner.

Q. Were you ever in the Shushana district?

A. Yes.

Q. When did you go in there?

A. We started in there on the first of July, 1913, and landed there about the 8th.

Q. Were you ever on Big Eldorado Creek?

A. Yes.

Q. When?      A. I was there on the tenth of July.

Q. Was that your first visit there? [277—255]

A. Yes.

Q. On what part of the creek were you? State what part you visited that day.

A. Why, I came over from Gold Run and down on what was called Number Four Below.

Q. Where did you strike the creek?

A. Number Four Below.

Q. What did you see there in the way of monuments, when you first struck the creek?

A. There was a monument there.

Mr. LEEHEY.—We object to any testimony as to

(Testimony of Wm. H. Hertsberg.)

what he saw at #4 as immaterial and move to strike the answer.

Mr. RITCHIE.—We want to show what was done by all these men working in company that day as to marking their claims and posting their location notices.

By the COURT.—The objection will be sustained as to 4—you may show it as to Discovery, One, Two and Three.

Plaintiff allowed an exception to the ruling.

Q. After passing the monument on Number Four where did you go?     A. I went up the creek.

Q. Did you see any other monument?

A. Yes, I saw Number Three.

Q. Did you examine it?

A. I just read the lower part of the notice.

Q. Did you find a notice?     A. Yes.

Q. The notice of Three?

A. Yes, it was a board there.

Q. Which end of Number Three was that?

A. It was the upper end, of course; it read downstream.

Q. Did you proceed further up the stream?     [278  
—256]     A. Yes, sir.

Q. Did you see any other monument?

A. Yes, I walked up further.

Q. What other monument did you see?

A. I saw Number Two monument.

Q. Was there any notice there?     A. Yes.

Q. What did you find, if anything, in the way of a notice and monument on Number Two?

(Testimony of Wm. H. Hertsberg.)

A. I found the same of a board, location notice, there.

Q. Did you read it?

A. Only the lower part of it; I was coming up the creek and I just looked over the notice.

Q. At which end of Number Two was that?

A. Well, it was the next above—there is one location notice on each claim.

Q. How far was the notice of #2 from the notice on #3?

A. It was about a quarter of a mile, I judge,—a claim length.

Q. Did you go further up the creek and see any other monument with a notice in it?

A. Yes, I went as far as the forks.

Q. After passing this monument at this end of #2, what did you see next in the way of a monument?

A. There was one on Number One.

Q. Did you read the notice?

A. Yes, in a general way.

Q. How did that read?

A. It was locating downstream.

Q. Did you proceed above Number One on any claim?

A. Well, I was up as far as Discovery.

Q. Was there a monument there on Discovery with the location notice? [279—257] A. Yes, sir.

Q. How did that read?

A. I can't remember; it was locating downstream, all of them what I saw.

Mr. RITCHIE.—That's all.



(Testimony of Wm. H. Hertsberg.)

Cross-examination by Mr. LEEHEY.

Q. You have jumped several claims in that region yourself, have you not?     A. I didn't jump.

Q. You are plaintiff in one of these Shushana cases?     A. One.

Q. Hertsberg against Doyle?     A. Yes, sir.

Q. That involves a contest over a placer mining claim in the Shushana region?     A. Yes, sir.

Q. A claim Mr. Doyle claims to have located prior to the time you located?     A. Yes, sir.

Q. Are there any other locations you made up there involving rival locations?     A. No.

Q. Are you interested with other parties in any of these other suits?

A. Well, I guess in a general way.

Q. Are you interested in any other claims that have been staked over locations claimed to be prior to them?

A. I am interested with George Wulf.

Q. He is the plaintiff in some of these cases?

A. Yes.

Q. Are you interested with anybody else? [280—258].     A. No.

Q. How long were you in the Shushana?

A. I came in the 8th of July and I went out about Thanksgiving.

Q. Were you in there continuously from the 8th of July on?     A. Yes, sir.

Q. What did you do in that time?

A. I was prospecting and doing assessment work.

(By Mr. RITCHIE.)

Q. Mr. Doyle is the gentleman who was on the wit-

(Testimony of Wm. H. Hertsberg.)

ness-stand a while ago, one of the parties who plastered half the Shushana district with location notices?

Mr. LEEHEY.—We object to that.

By the COURT.—The objection will be sustained and the Jury will be instructed to pay no attention to the remarks of counsel unless it is borne out and sustained by the testimony you yourselves have heard from the witnesses.

Witness excused.

Testimony closed. Whereupon court adjourned until to-morrow (Friday), April 3, 1914, at ten o'clock A. M.

Friday, April 3, 1914—Morning Session.

Mr. DONOHOE.—Pursuant to an agreement between counsel we at this time desire to offer in evidence Volume One of the Records of the White River recording precinct, the entire book.

By the COURT.—These books were brought out upon the order of this court from the Shushana, under seal, by Mr. J. J. Finnegan, with the understanding that they should be delivered to the clerk of this court with the seals unbroken and at the expense of Mr. O. A. Tucker, at whose request this was done; and that they would be returned by Mr. Finnegan to the recorder under seal when they [281—259] were through with them here at this term of court, also at the expense of Mr. Tucker, who agreed to see that the expense of bringing them here and taking them back was paid—this to be done by the 15th of this month if it is found necessary to return these

books at that time to the Shushana or White River precinct where they belong; that either party desiring to use them or to have them properly transcribed and made part of the record must do so before that time, or must have the transcript made by the recorder at the White River precinct, the intention of this being that the books shall not be detained here longer than the 15th of this month. It may be that Mr. Finnegan will not be returning to the precinct until later, in which event the time may be extended by order, the intention being that the books shall not be required to be kept here longer than he may be returning to take them back. The book may be admitted with this understanding. (Vol. 1 admitted as Dfts. Ex. 7.)

(It was subsequently agreed between counsel that a transcript of this exhibit need not be forwarded with this record.)

Whereupon counsel addressed the Jury and at 1 P. M. recess was taken until 2.

#### AFTERNOON SESSION.

##### [Instructions of the Court to Jury.]

By the COURT.—Gentlemen of the Jury: In instructing you as to the law, it will be your duty to accept as the law what I will now read to you, which will be handed you to take with you to the jury-room. If I am in error as to just what the law is, the party who feels prejudiced by it has his right of appeal and the matter may be determined finally and in an orderly manner. But if each juror was permitted to exercise his own opinion as to what was the law, there would be endless confusion and no possibility of ar-

iving at a verdict at all. The principal question for you to decide in this case is quite [282—260] simple, to wit: Did the plaintiff or did the defendant first in point of time make a discovery of valuable mineral and do the other acts necessary to complete a valid location of the placer mining claim in dispute.

The person who first, in point of time, makes such discovery of valuable mineral and completes his location has the better right and is entitled to the possession of the ground.

In determining this question you will have to consider the law relating to the locating of placer claims and the law and rules of evidence concerning the testimony which you have heard in this case.

The defendant claims to have made a location through Gates, as his attorney in fact, on July 6th, 1913, on which day he claims to have made a discovery of valuable mineral, marked the boundaries of his claim so that the same could be readily traced and on July 27th, 1913, filed his location certificate with the recorder of the White River Precinct and on the 29th of July, 1913, claims to have filed the power of attorney from the defendant Purdy to Gates with the said recorder.

If you find from the evidence that these acts were done at the times and in the manner testified to by the defendant and his witnesses, then your verdict should be for the defendant.

Plaintiff claims that on August 30th, 1913, the said mining ground in dispute in this case was unclaimed and unlocated and *appropriated* public mineral land of the United States, and *that made* a discovery of

valuable mineral thereon, marked the *bound* of his claim and on the 7th day of October, 1913, caused to be *corded* in said precinct certificate of location as provided.

If you find by a preponderance of the evidence that said [283—261] ground was unclaimed, unappropriated and unoccupied public mineral land of the United States on said 30th day of August, 1913, and that plaintiff performed all of said acts necessary to constitute a valid location, as will be defined in these instructions, then you should find for the plaintiff.

The jury are instructed that the burden of proof in this case is upon the plaintiff, who must establish the facts alleged in his complaint by a fair preponderance of the evidence. The jury, however, are the judges of the effect and value of the evidence and the weight which is to be attached to the testimony of each witness.

This power of judging the effect of evidence is not arbitrary, but is to be exercised by you with legal discretion and in subordination to the rules of evidence. You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number, or against a presumption or other evidence, satisfying your minds. But you are to consider all the evidence and determine the weight and importance to be attached to the testimony of each witness, and unless you are satisfied that there is a fair preponderance of the testimony in favor of the plaintiff, your verdict must be for the defendant.

By a preponderance of the evidence is meant that



where the evidence is equally balanced, so that you are in doubt as to what to believe, you must resolve that doubt against the one having the affirmative of the question. In this case the plaintiff has the affirmative, and before you can find for plaintiff, he must prove by a preponderance of the evidence that he has the better right to the ground in dispute, and he must rely upon the strength of his own right and not on the weakness of the defendant's right. [284—262]

You are instructed that the affirmative of any issue must be proven by the party asserting the affirmative and in this case the burden of proof is upon the plaintiff to establish the affirmative of the issue in this case by a fair preponderance of the evidence, and you are instructed that evidence is to be estimated not only by its own intrinsic weight but also according to the evidence which it is within the power of one side to produce and of the other side to contradict. If weaker and less satisfying evidence is offered when it appears that stronger and more satisfying evidence was within the power of the party to produce, the evidence should be viewed with distrust.

You are instructed that if you believe any witness in this case willfully testified falsely in one part of his testimony, you may distrust his testimony in other parts.

You are instructed not to pay any attention to the remarks of attorneys on either side in this case except so far as they agree with the evidence in the case, and the law as given you by the Court.

On July 6th, 1913, at the time defendant claims to have made his location, the law in Alaska required

that the locator must make a discovery of valuable mineral and mark the boundaries of his claim in such a manner that the same could be readily traced. It did not require that the locator should post a notice of location on the claim, or that he should even file the location notice with the recorder, but that he may do either or both of these acts, but the location is not invalid by reason of failure to do either or because there is a mistake in the calls or courses or distances given in either a notice posted on the ground or a notice filed for record. [285—263]

Where a location is made by an attorney in fact for another he must be duly authorized thereto by a power of attorney, in writing, duly acknowledged and recorded in any recorder's office in the judicial division where the location is made, in this case the Third Judicial Division of Alaska. You are instructed that such power of attorney need not be so recorded prior to the first step taken in making the location and if you believe from the evidence in this case that the defendant Purdy executed a power of attorney, in writing, to G. L. Gates prior to July 6th, 1913, and that the same was duly acknowledged, and that on July 29th, 1913, said power of attorney was given to the recorder for the White River Precinct of Alaska for record and the recording fees paid, then the defendant sufficiently complied with the law in that regard.

You are instructed that if you find from a fair preponderance of the evidence that the defendant Purdy executed a power of attorney, in writing, authorizing the said Gates to locate placer mining claims for said

Purdy in Alaska, and that the same was duly acknowledged, and recorded in the White River Recording District, and if you further find from a fair preponderance of the evidence that the boundaries of the placer claim No. 2 Below Discovery on Eldorado Creek were sufficiently marked on the ground, then you should disregard any errors in the notice posted on the claim, and your verdict should be for the defendant.

You are instructed that while under the laws of Alaska in force prior to August 30th, 1913, it was not actually necessary to post a notice of location upon a placer mining claim, nor even to record the location notice, yet it was the custom to do either or both these acts. Where the location notice was recorded, the legal [286—264] effect of it was to give constructive notice of the location to all persons and where the notice was posted on the ground, it was for the purpose of aiding in ascertaining the boundaries of the claim, but failure to post any notice on the ground or even to record the location notice did not render the location void.

You are instructed that a record of a mining location authorized by law is constructive evidence to all parties of the contents of such record, and if you find from the evidence that the location notice of the defendant Purdy was duly recorded in the office of the Recorder of the White River Precinct and Recording District of Alaska, prior to the time of the alleged location by the plaintiff Sutherland, then the plaintiff Sutherland is conclusively deemed to have notice of such location, whether he had actually ex-

amined the recorded notice or not.

Lindley on Mines, sec. 392.

You are instructed that if you find from the evidence that the alleged location for the defendant Purdy of the claim designated as No. 2 Below Discovery on Eldorado Creek was properly marked on the ground on July 6th, 1913, so that its boundaries could be readily traced, then it is immaterial whether such markings remained in place on August 30th, 1913. If such marks had become obliterated or were even totally destroyed by other persons, it would not affect the validity of the location.

You are instructed that under the laws of Alaska in force on July 6th, 1913, while the locator of a placer mining claim was required to mark the boundaries of such claim by proper monuments, so that such boundaries could be readily traced, yet there was no particular form of marking the boundaries prescribed by law, and [287—265] any corner monuments or stakes or other markings sufficient to indicate the claim upon the ground with reasonable certainty to those inspecting the same were sufficient in law.

You are instructed that while posted or recorded notices are an aid in determining the boundaries of a claim and the position of the monuments which mark such boundaries, yet it is the boundaries as marked on the ground by proper stakes or monuments which really define the limits of the location, and if a difference exists *exists* between the descriptions given in the notice as posted on the ground and the stakes or other monuments established thereon,



then the monuments govern and control, and are to be considered as correctly indicating the tract of ground included within the location of such mining claim.

Lindley on Mines, sec. 373, page 877.

On August 30th, 1913, the time when plaintiff claims to have made his location, an Act passed by the Territorial Legislature of Alaska was in force and it required that in order to make a location of a placer mining claim, the locator—

“must at the time of discovery post conspicuously at the point of discovery, a notice of location thereof, containing (a) the name or number of the claim; (b) the name of the locator or locators; (c) the date of discovery and posting of notice as in this section provided for; (d) the number of feet in length and width claimed; the notice herein described shall be known as the location notice.

At the time of posting the notice of location, he shall distinctly mark the location on the ground so that its boundaries can be readily traced, by placing at each corner or angle thereof substantial stakes or posts not less than three feet high, above the ground and three inches in diameter and hewed on the side or sides facing the claim, or by placing at each corner or angle thereof mounds of earth or rock not less than three feet high. Whatever monument is used it must be marked with the name or number of the claim and the designation of the corner by number, and the monument nearest the discovery



shall be the initial post, stake or monument, and shall be post, stake or monument number one; and further the corners shall be numbered in regular rotation. If the [288—266] claim is located on ground that is covered wholly or in part with brush or trees, such brush shall be cut and trees be marked or blazed along the lines of such claim to indicate the location of such lines. If located in an open country the boundary lines shall be marked by placing line stakes or line monuments so as to readily lead from corner to corner of such claim.

Within ninety days from the date of discovery, and prior to the filing of the certificate of location as provided in the following section the locator or locators shall perform labor upon such claim in developing the same, to an amount which shall be equivalent in the aggregate to one hundred dollars' worth of such work for each twenty acres or fractional part thereof, contained in such claim, and such work shall be known and shall constitute 'location work.'

\* \* \*

Within ninety days after the discovery the locator shall record with the recorder of the precinct wherein such claim is situate, a certificate of location. Such certificate shall contain:

- (a) The name or number of the claim.
- (b) The name of the locator or locators.
- (c) The date of discovery and posting of the location notice.

(d) Number of feet in length and width claimed.

Such certificate shall also set forth a description of the location of such claim with reference to some natural object, permanent monument or well-known mining claim; a description of the boundaries, corner monuments and markings thereon, and a description of the location work and the place where the same has been performed. Such certificate of location shall not be accepted for record by the precinct recorder unless the same be verified before the recorder of the precinct or some officer authorized to administer oaths, by the locator, or one of the locators, if there be more than one, or by the authorized agent, having personal knowledge of the facts required to be stated therein."

You are instructed that a mining location cannot be initiated by trespass and that no person is entitled to enter upon ground lawfully in the possession of another, against his will and without his consent, for the purpose of prospecting or locating a mining claim thereon and that any such attempted location is wholly void.

*Bilk v. Meagher*, 104 U. S. 279, 26 Law Ed. 735.

*Lindley on Mines*, 3d ed., secs. 217-218.

You are further instructed that although the law requires the locator to mark the boundaries of his claim, it does not require him to maintain or perpetuate the boundaries once established, and where a mining claim is once sufficiently marked on the ground, and all other acts of location are performed,

a right vests in the locator which cannot be divested by the subsequent obliteration [289—267] of the marks or removal of the notice or monuments without the fault of the locator.

Lindley on Mines, 3d ed., sec. 375.

Tonapah etc. v. Tonopah Mng. Co., 125 Fed. 389-391.

All persons are equal before the law. You should not allow either sympathy or prejudice to influence you. The terms "claim jumpers" or "claim grabbers" should not distract your attention.

If the ground was not located on August 30, 1913, the plaintiff had a perfect right to locate it without being called a claim jumper.

On the other hand, if defendant Purdy caused the ground to be first located, and complied with the law as given you in these instructions, he should not be called a claim grabber, even though he did not live in Alaska. It is not claimed he located a greater number of claims than the law permitted him to do.

You are instructed that the plaintiff cannot recover in this action by reason of any failure of the defendant to perform the annual assessment work required by law on the placer claim designated as No. 2 Below Discovery on Eldorado Creek, and even if you believe from the evidence that the defendant failed to perform the annual assessment work on said placer claim for 1913, the plaintiff can claim no advantage by reason of such failure, and any such failure would affect only the right of defendant to a decree of this court quieting his title against the plaintiff, and defendant's right to such a decree is

to be determined by the Court.

I herewith submit to you two general forms of verdict, one finding for the plaintiff and the other finding for the defendant. [290—268] When you have arrived at your verdict you will have your foreman sign the one you find and return it into Court.

I also submit two questions to be answered by you either Yes or No. In addition to signing the general verdict for either the plaintiff or the defendant, you will have your foreman sign the two questions, after writing in your answer, either Yes or No, to each of said questions, and return the same into Court.

You may take with you the pleadings in this case and all the papers and exhibits introduced in evidence in the case.

FRED M. BROWN,  
District Judge.

Dated at Cordova, Alaska, this 3d day of April, 1914.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 3. 1914. Arthur Lang, Clerk. By K. L. Monahan, Deputy. [291—269]

The Judge having finished reading his instructions—

Mr. DONOHOE.—I desire to have the record show the ordinary stipulation, which is agreed upon by counsel for both sides, that either side may have five days from the return of the verdict in which to take exceptions to the instructions.

By the COURT.—Very well; it will be so agreed.

Whereupon the Jury retired to deliberate upon its verdict. [292]

**[Certificate of Official Stenographer to Transcript of  
Testimony.]**

I do hereby certify that I am the Official Court Stenographer for the Third Judicial Division, Territory of Alaska; that as such official stenographer I reported the proceedings in the trial of the above-entitled cause, to wit, Dan D. Sutherland versus Frank W. Purdy, #C/73 of the files of said court; that the above, consisting of two hundred and sixty-nine (269) typewritten pages, is a full, true and correct transcript of the testimony introduced at said trial.

Dated at Valdez, Alaska, June 10, 1914.

ISAAC HAMBURGER. [293]

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*In the District Court for the Territory of Alaska,  
Third Division.*

C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Request for Special Findings.**

The defendant requests the Court to instruct the jury to render a special verdict in this action and to answer specifically the following questions:

I.

Did the defendant Purdy execute and deliver to G. L. Gates a power of attorney in writing prior to



July 6th, 1913, and was the same duly acknowledged and thereafter recorded with the recorder of the White River Recording District of Alaska?

II.

Was the placer mining claim designated as No. 2 Below Discovery on on Eldorado Creek in the White River Recording District of Alaska staked on the ground and its boundaries sufficiently marked by stakes or monuments at the time of the alleged location of such claim on the behalf of the defendant Purdy?

MAURICE D. LEEHEY,  
J. J. FINNEGAN,  
Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 3, 1914. Arthur Lang, Clerk. By K. L. Monahan, Deputy. [294]

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*In the District Court of the Territory of Alaska,  
Third Division.*

C-73.

DAN SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Exceptions to Instructions.**

Now comes the plaintiff and pursuant to stipulation made in open court in the presence of the jury at the close of the Court's instructions to the jury by counsel for the parties respectively, files this his

exception to the Court's refusal to give certain instructions offered in writing in behalf of plaintiff, and to certain instructions given by the Court, to wit:

I.

Plaintiff excepts to the refusal of the Court to give to the jury the instructions asked by plaintiff numbered 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, respectively, which were presented to the Court in writing.

II.

Plaintiff excepts to so much of the instructions given by the Court as reads as follows on the first page thereof:

"The defendant claims to have made a location through Gates as his attorney in fact, on July 6th, 1913, on which day he claims to have made a discovery of valuable mineral, marked the boundaries of his claim so that the same could be readily traced, and on July 27th, 1913, filed his location certificate with the recorder of White River Precinct, and on the 29th day of July, 1913, claims to have filed the power of attorney from the defendant Purdy to Gates with the said recorder.

"If you find from the evidence that these acts were done at the times and in the manner testified to by the defendant and his witnesses, then your verdict should be for the defendant."

On the ground that the same is contrary to the provisions of the act of Congress approved August 1, 1912, and contained in [295] section 129, subdivisions a, b, c, d and e of the Compiled Laws of

Alaska, of 1913, in this, that said act requires a power of attorney authorizing an attorney in fact to locate placer mining claims in Alaska to be in writing, duly acknowledged, and recorded in a recording precinct within the judicial division wherein the location is made. This act requires the power of attorney to be recorded before the attorney in fact takes the first step in the location of a mining claim under it, and in any event requires the recording of the power of attorney before the location of the claim is completed. The uncontradicted testimony shows that the alleged power of attorney from Purdy to Gates was not filed for record until long after the alleged location of the claim.

### III.

Plaintiff excepts to the following instruction given on page 7 of the instructions given by the Court, to wit:

“On July 6th, 1913, at the time the defendant claims to have made his location, the law in Alaska \* \* \* did not require that the locator should post a notice of location on the claim, or that he should even file the notice of location with the recorder, but that he may do either or both of these acts, but the location is not invalid by reason of failure to do either or because there is a mistake in the calls or courses or distances given in either a notice posted on the ground or a notice filed for record.”

On the ground that the same does not correctly state the law, in this, that if a locator does place upon

a mining claim a notice of location describing the directions in which the claim lies, then he is bound by the description contained in the notice as to directions in which the claim lies, and said notice so posted thereupon becomes part of the markings upon the ground to assist a subsequent prospector in readily tracing the boundaries of the claim upon the ground.

#### IV.

Plaintiff excepts to so much of the instruction given on page 7 of the Court's instructions, in the second paragraph thereof, after the statement of the requirements of the law as to the power of attorney to locate placer claims, as reads as follows, to wit:

“You are instructed that such power of attorney need not be [296] recorded prior to the first step taken in making the location, and if you believe from the evidence in this case that the defendant Purdy executed a power of attorney in writing to G. L. Gates prior to July 6th, 1913, and that the same was duly acknowledged, and that on July 29th, 1913, said power of attorney was given to the recorder for the White River Precinct of Alaska for record and the recording fees paid, then the defendant sufficiently complied with the law in that regard.”

On the following ground: That the same is contrary to the provisions of the act of Congress of August 1, 1912, which requires such a power of attorney to be of record prior to any step in location, the specified requirements of the law as to a power of attorney being merely qualifications of the agent to act and not any part of the procedure in location of a mining claim.

## V.

Plaintiff excepts to the instruction given on page 8 of the Court's instructions, as follows:

"You are instructed that if you find from a fair preponderance of the evidence that the defendant Purdy executed a power of attorney in writing authorizing the said Gates to locate placer mining claims for said Purdy in Alaska, and that the same was duly acknowledged, and recorded in White River Recording District, and if you further find from a fair preponderance of the evidence that the boundaries of the placer claim No. 2 Below Discovery on Eldorado Creek were sufficiently marked on the ground, then you should disregard any errors in the notice posted on the claim, and your verdict should be for the defendant."

On the ground that said instruction fails to state the law in failing to state that all the acts necessary to make the power of attorney sufficient under the law must be complete before any step in location by the attorney, including the filing of the power of attorney for record. And on the further ground that the notice posted on the claim becomes and is a part of the markings upon the ground by which the boundaries of the claim are to be readily traced. In this case it is admitted by all the evidence that the notice posted on the ground described the claim as running 1320 feet upstream from the notice, the plaintiff claiming that the notice was posted at the upper end of the claim and the defendant claiming the notice was posted at the lower end of the claim.



The question which should have been submitted to the jury on this point was, on which end of the claim was the notice posted? [297]

## VI.

Plaintiff excepts to the instruction on page 9 of the instructions given by the Court, as follows, to wit:

“You are instructed that while under the laws of Alaska in force prior to August 30th, 1913, it was not actually necessary to post a notice of location upon a placer mining claim, nor even to record the location notice, yet it was the custom to do either or both of these acts. Where the location notice was recorded the legal effect of it was to give constructive notice of the location to all persons, and where the notice was posted on the ground, it was for the purpose of aiding in ascertaining the boundaries of the claim, but failure to post any notice on the ground or even to record the location notice did not render the location void.”

On the ground that the same incorrectly states the law in this, to wit: When a locator posts a notice of location on his claim the notice becomes a part of the markings on the ground to enable a subsequent prospector to trace the boundaries of the claim, and when the notice posted on the ground described the claim as running in a certain direction and the recorded notice describes it as running in the opposite direction, the notice posted on the ground controls. And upon this issue the Court should have given instruction number 3 asked by plaintiff and the latter part

of instruction number 4 asked by plaintiff.

## VII

Plaintiff excepts to the first paragraph of the Court's instruction given on page 10, which reads as follows, to wit:

"You are instructed that a record of a mining location authorized by law is constructive evidence to all parties of the contents of such record, and if you find from the evidence that the location notice of the defendant Purdy was duly recorded in the office of the recorder of White River precinct and recording district of Alaska prior to the time of the alleged location by the plaintiff Sutherland, then the plaintiff Sutherland is conclusively deemed to have notice of such location, whether he has actually examined the recorded notice or not."

On the ground that the same is a legal abstraction not applicable to the facts of this case, for the reason that the notice posted on the ground by the alleged attorney for defendant Purdy describes the claim as running 1320 feet upstream and this notice was a part of the markings on the ground by which the boundaries of the claim were to be traced, and the recorded notice referred to in said instruction [298] describes the claim as extending 1320 feet downstream. There being a direct conflict in the two descriptions the one posted on the ground prevails.

## VIII.

Plaintiff excepts to the second instruction given on page 11 of the Court's instruction, as follows, to wit:

“You are instructed that while posted or recorded notices are an aid in determining the boundaries of a claim and the position of the monuments which mark such boundaries, yet it is the boundaries as marked on the ground by proper stakes or monuments which really define the limits of the location, and if a difference exists between the descriptions given in the notice as posted on the ground and the stakes or other monuments established thereon, then the monuments govern and control and are to be considered as correctly indicating the tract of ground included within the location of such mining claim.”

On the ground that the same incorrectly states the law in this: The rule that monuments control in real estate boundaries is subject to the limitation that they approximate courses and distances, and if they are widely at variance with the location of the land as indicated by the courses and distances in the description, then they are to be disregarded. In this case the location notice posted on the ground described the claim as running upstream and entirely outside the land in controversy.

### IX.

Plaintiff excepts to the first question submitted to the jury for a special finding thereon, on the ground that there was no legal evidence offered at the trial in any manner establishing that any power whatever was executed by the defendant Purdy authorizing G. L. Gates to locate for said defendant placer mining claims in Alaska, and on the further ground that

such a power of attorney would be valueless for the purpose stated unless it was recorded in some recording office of the Third Judicial Division of Alaska prior to the first step taken in location by virtue of its authority.

X.

Plaintiff excepts to the second question submitted to the jury for a special finding thereon on the ground that the same is uncertain, indefinite and incomplete [299] and insufficient to elicit an answer applicable to any issue in the case, for the reason that it fails to state the requirement of law that stakes or monuments on the ground must be sufficient to indicate the boundaries of a claim so that the same can be readily traced upon the ground.

T. J. DONOHUE and

E. E. RITCHIE,

Attorneys for Plaintiff.

Service of copy admitted this 6th day of April, 1914.

M. D. LEEHEY and

J. J. FINNEGAN,

Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 6, 1914. Arthur Lang, Clerk. By K. L. Monahan, Deputy.  
[300]

*In the District Court for the Territory of Alaska,  
Third Division.*

No. C—73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Verdict.**

We, the jury duly empaneled and sworn in the above-entitled action, do find for the defendant.

E. A. HEGG,

Foreman.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 3, 1914. Arthur Lang, Clerk. By K. L. Monahan, Deputy.

Entered Court Journal No. C—2, page No. 222.

[301]

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**Answer to Special Findings.**

I.

Did the defendant Purdy execute and deliver to G. L. Gates a power of attorney in writing prior to July 6th, 1913, authorizing Gates to locate placer claims for Purdy in Alaska, and was the same duly acknowledged and thereafter recorded with the recorder of the White River Recording District of Alaska?

Answer: Yes.

E. A. HEGG,

Foreman.



## II.

Was the placer mining claim designated as No. 2 Below Discovery on Big Eldorado Creek in the White River Recording District of Alaska staked on the ground and its boundaries sufficiently marked by stakes or monuments at the time of the alleged location of such claim on the behalf of the defendant Purdy?

Answer: Yes.

E. A. HEGG,  
Foreman.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 3, 1914. Arthur Lang, Clerk. By K. L. Monahan, Deputy.

Entered Court Journal No. C—2, page No. 223.  
[302]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C—73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Motion for a New Trial.**

NOW COMES the plaintiff by his attorneys, O. A. Tucker, T. J. Donohoe and E. E. Ritchie, and moves the Court to set aside the verdict returned by the jury in this action and to grant a new trial of this cause upon the following grounds:

## I.

That the evidence was insufficient to justify the verdict in this: That the defendant wholly failed to establish that the alleged Power of Attorney from defendant Purdy to G. L. Gates, concerning which testimony was admitted by the Court, was a duly executed Power of Attorney authorizing Gates to locate placer mining claims for Purdy in Alaska.

That said verdict is against law in this: it is admitted in evidence by the defendant that no Power of Attorney from Purdy to Gates was filed for record until after the attempted location of the mining claim in question, and after the filing of the Location Notice of the same; and the evidence failed to show that the alleged Power of Attorney testified to by witnesses for defendant was the same as that filed for record; and the alleged Power of Attorney shown by the record of the Recorder's office introduced in evidence totally fails to show that it is a Power of Attorney or that it confers any authority upon Gates.

## II.

Errors in law occurring at the trial and excepted to by plaintiff at the time, as follows, to wit:

1. The Court erred in admitting evidence over the objection of plaintiff of an alleged Power of Attorney not pleaded by [303] defendant, and in admitting evidence of an alleged defect in a public record, to wit, the Record of the White River Recording Precinct, when an impeachment of the record had not been pleaded.

2. The Court erred in ruling that defendant had made a sufficient showing of the existence of the

alleged missing Power of Attorney and of diligence to produce it at the trial.

3. The Court erred in its instructions given to the Jury, and in refusing to give certain instructions asked by plaintiff, to which instructions and refusals to instruct plaintiff has filed exceptions in writing herein, which exceptions plaintiff hereby refers to and adopts as part of this Motion.

Dated this 6th day of April, 1914, at Cordova, Alaska.

O. A. TUCKER,  
T. J. DONOHOE and  
E. E. RITCHIE,  
Attorneys for Plaintiff.

Service of copy admitted this 6th day of April, 1914.

M. D. LEEHEY,  
J. J. FINNEGAN,  
Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 6, 1914. Arthur Lang, Clerk. By K. L. Monahan, Deputy. [304]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Order Denying Motion for New Trial.**

This cause came on before the Court this 10th day of April, 1914, upon the motion of plaintiff for an order setting aside the verdict heretofore returned herein in favor of the defendant and against the plaintiff, and to grant a new trial in the action. The motion was submitted without argument, and after consideration thereof the Court directed that an order be entered denying the same. To which ruling and order of the Court the plaintiff by his counsel then and there excepted and the exception was by the Court allowed.

Done at Cordova, Alaska, April 10, 1914.

FRED M. BROWN,

Judge.

[Endorsed]: Entered Court Journal No. C-2, Page 244. Filed in the District Court, Territory of Alaska, Third Division. Apr. 10, 1911. Arthur Lang, Clerk. By K. L. Monahan, Deputy. [305]

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*In the District Court for the Territory of Alaska,  
Third Division.*

C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

### **Judgment.**

This cause came regularly on for trial in open court on March 31st, 1914, and the plaintiff was present in person and represented by Messrs. T. J. Donohoe and E. E. Ritchie, as counsel, and the defendant was present in person and represented by Maurice D. Leehey, and J. J. Finnegan, as counsel, and a jury of twelve men was duly empaneled and sworn to try this cause, and testimony was introduced on behalf of the plaintiff and on behalf of the defendant, and the proceedings continued from day to day until the testimony was concluded by the parties, and the case was then argued to the jury by counsel for the respective parties, and the jury was instructed by the Court and thereupon retired to consider for their verdict.

And thereafter the jury returned into court and gave their verdict in writing, which was duly entitled in this court and cause, was signed by the foreman of said jury and in its behalf and read as follows: "We, the jury duly empaneled and sworn in the above-entitled action, do find for the defendant. E. A. Hegg, Foreman."

Thereupon each juror answered in open court that the same was his verdict and such verdict was thereupon filed and duly entered herein, and the same was found by the Court to be in due form and to have been regularly given and made, and that the defendant is entitled to judgment thereon against the plaintiff in accordance with said verdict, and the Court further finds from the testimony and verdict and as



a matter of law that the defendant is entitled to have entered herein the decree of this [306] Court quieting the title of said defendant to the placer mining claim designated as No. 2 Below Discovery on Big Eldorado Creek in the White River Recording District of Alaska as against all claims of the plaintiff:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff, Dan D. Sutherland, take nothing by this action, and that his complaint be dismissed, and further, that the defendant, F. W. Purdy, have judgment against said plaintiff, Dan D. Sutherland, for his costs herein, to be taxed by the clerk.

IT IS FURTHER ADJUDGED AND DECREED that the said defendant, F. W. Purdy, is the owner and entitled to the sole possession of the placer mining claim designated as No. 2 Below Discovery on Big Eldorado Creek, a tributary of Wilson Creek, which latter is a tributary of the Chisana River in the White River Recording District of Alaska, and that the attempted location of any portion of the ground included therein by the plaintiff as the Surprise Fraction placer mining claim was and is wholly void, and is hereby so declared and held for naught, and the said plaintiff, Dan D. Sutherland, and all persons claiming through or under him or in any manner through or under his attempted location of the said Surprise Fraction placer mining claim are and each of them is hereby permanently and forever enjoined and restrained from in any manner asserting title to or claiming posses-

sion of any ground included in the said placer mining claim designated as No. 2 Below Discovery on Big Eldorado Creek, and from in any manner interfering with or disturbing the defendant and his heirs and assigns, in the possession, use or enjoyment thereof.

Done in open court and signed and ordered entered herein on this tenth day of April, A. D. 1914.

FRED M. BROWN,  
Judge.

Attest: ARTHUR LANG, Clerk.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 10, 1914. Arthur Lang, Clerk.

Entered Court Journal No. C-2, page No. 239.  
[307]

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**[Plaintiff's Exhibit "B"—Notice of Placer Mine Location.]**

**NOTICE OF PLACER MINE LOCATION.**

Plaintiff's Exhibit "B."

C-73.

Notice is hereby given that the undersigned, a citizen of the United States, over twenty-one years of age, has, on this 30 day of August, 1913, located a placer mining claim, of 191½ acres, more or less, situated in the White River mining district in the Territory of Alaska, and more particularly described as follows, to wit:

Commencing at this initial monument and running down stream 1300 feet by 330 ft. on each side

of this monument, claim to be known as Surprise Fraction, situated between A. F. Nelson's No. 2 below Big Eldorado claim, and R. Bell No. 3 below, claim beginning at this initial monument and running 1300 ft. down stream northwesterly to center end and 330 ft. on each side of monument, corners marked by four willow posts, and that I intend to hold and work the same according to the laws and local rules and regulations.

Date of Discovery—Aug. 30.

Date of Location—Aug. 30.

DAN SUTHERLAND,

Locator.

Witnesses: JACK J. FORD. [308]

**Plaintiff's Exhibit "C"—in C-73 (Certificate of Location).**

Plaintiff's Exhibit "C," in C-73.

**CERTIFICATE OF LOCATION.**

THIS IS TO CERTIFY, that the undersigned, a qualified entryman *un* the laws of the United States has located and does hereby claim the following described placer mining claim, to wit:

The name of the claim is Surprise Fraction. The names of the locator or locators is (xxx) Dan. Sutherland.

The dates of *Discover* and the posting of the location notice are August 30 and August 30, A. D. 1913, respectively. Said claim is 1300 feet long and 660 feet wide. Said claim is located in the White River or Cathenda Mining District, Territory of Alaska,

on the Big Eldorado creek, which is a tributary to and near to Wilson Creek, and is further bounded by monuments, posts and corners, as follows, to wit: Commencing at the initial Stake and running thence 330 feet northerly to Stake No. 1; thence 1300 feet westerly to Stake No. 2; thence 330 feet southerly to lower center end; thence 330 feet southerly to Stake No. 3; thence 1300 feet easterly to Stake No. 4; thence 330 feet northerly to place of beginning. This claim is situated between A. F. Nelson's No. 2 below Discovery, and Richard Bell's No. 3 below on Discovery on said Big Eldorado Creek.

Location work has been done and performed on said claim equivalent to one hundred dollars at the rate of wages prevalent in the mining above named for the same kind of work, and the said work is described as follows, to wit:

The construction of a cut 2 feet deep,  $21\frac{1}{2}$  feet wide and 45 feet long. Said cut is in the creek bottom about 75 feet from the initial monument, downstream. Also another cut in the bank on the right limit of said creek about 125 feet from the initial monument 18 feet long; averaging 4 feet deep and  $41\frac{1}{2}$  feet wide. Said work was done and performed at the instance and under the direction of affiant for the purpose of improving the said claim in compliance to the laws regulating the location of mining claims in Alaska.

Dated Sept. 18, A. D. 1913. [309]

DAN SUTHERLAND,

Locator.

Subscribed and sworn to *before this* 7th day of October, 1913.

[Seal]

J. J. FINNEGAN,  
Notary Public for Alaska.

My commission expires Aug. 19, 1917.

[Endorsed]: "Filed for record October 7th, 1913, at 10:45 A. M., by Dan Sutherland, and recorded in Vol. 6, page 250, Records of White River Precinct, Alaska. H. E. Morgan, Recorder. By J. J. Finnegan, Deputy." [3!0]

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[Defendant's Exhibit No. 1—Telegram, Gates to Purdy.]

INDENT. DEFTS. 1.

UNITED STATES SIGNAL CORPS.

Time Filed 5:30 P. M. 10 words pd. \$1.30.

Cordova, Alaska, March 27, 1914.

Frank W. Purdy,

Forty Mile, Y. T.,

via Ft. Egbert, Alaska.

Have you the power attorney you gave me last May.

G. L. GATES.

Answer c/o Hotel Windsor, Cordova.

Defendant's Exhibit No. 1, C-73. [311]



**[Defendant's Exhibit No. 2—Telegram, Purdy to  
Gates.]**

18

**SIGNAL CORPS, UNITED STATES ARMY  
TELEGRAM.**

Received at Cordova, Alaska.

22 V. K. R. 10 Via Eagle.

Forty Mile, Y. T., Mar. 28, 1914.

G. L. Gates,

Cordova, Alaska.

You have it delivered to you day leaving here  
positive.

FRANK W. PURDY.

4—14 P.

Defendant's Exhibit No. 2, C—73. [312]

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**[Certificate of Clerk U. S. District Court to Copy of  
Defendant's Exhibit No. 3.]**

United States of America,

Territory of Alaska,

Third Division.—ss.

I, the undersigned Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the attached is a full, true and correct copy of the original pages No. 278, 279 and 280, Record Book No. 1 of the Records of the White River Precinct, Third Judicial Division, Territory of Alaska, as the same appears on file and of record in my office.

In Testimony Whereof, I have subscribed **my**

name and affixed the seal of the said Court of Valdez, Alaska, this 31st day of March, 1914.

[Seal]

ARTHUR LANG,  
Clerk.

By K. L. Monahan,  
Deputy.

Defendant's Exhibit No. 3, Cause No. C.-73.

**[Defendant's Exhibit No. 3—Excerpts from Records  
of White River Precinct.]**

278

July 21, 1913.

Power Attorneys.

Fred C. Thompson to Mrs. H. E. Morgan.

- 1 Sworn to June 12, 1913, before G. C. Cole.  
Am *counsul* Dawson, Y. T. Witnessed  
by H. E. Morgan.

Recorded by above at 9:45 A. M. July 21,  
1913.

(Sgn.) H. E. MORGAN,  
Rec.

By H. H. Waller.

Thomas Clair to Dan Ryan.

- 2 Sworn to July 16th, 1913, before H. E.  
Morgan.

Notary Public at Canyon City, Y. T.

Recorded July 21, 1913, at 9:50 A. M.

(Sgn.) H. E. MORGAN,  
Rec.

By H. H. Waller.

Dep.

July 26, 1913.

E. Mullett to John Murtaugh.

Taken at Little Eldorado, before H. E. Morgan, Commissioner and Notary Public,

3 On July 26, 1913.

Recorded at 6 P. M. July 26, 1913.

(Sgn.) H. E. MORGAN,

Rec.

By H. H. Waller.

Dep. [313]

July 26, 1913.

280

279

C Frederick Lambert to Joseph P. McLellan.

July 14, 1913—Witnessed by R. Wiley.

4 Filed for record at 20 M. past 5 P. M.  
July 26, 1913.

Sworn to before A. M. Taylor, July 14, 1914, at Canyon City, Y. T.

(Sgn.) H. E. MORGAN,

H. H. Waller.

Deputy.

July 21.

Fred C. Thompson to Mrs. H. E. Morgan.

July June 12, 1913, before G. C. Cole Am.  
Con.

5. Dawson, Y. T. Witnessed by H. E. Morgan.

Recorded by above on July 21, 1913, 9:45  
A. M.

(Sgn.) H. E. MORGAN,

H. H. Waller,

Dep.

1.80

Skelton M. Co.  
H. E. Morgan.

S. K. M. Co.

July 21.

Thomas Clair to Dan Ryan.

- 6 Sworn to July 16th, 1913, before H. E. Morgan Commissioner.

Recorded July 21, 1913.

(Sgn.) H. E. MORGAN,  
Com.  
H. H. Waller,  
Dep.

July 28, 1913.

Maurice D. Leehey to R. W. Wiley.

Sworn to before B. A. Northrup, at  
Seattle, June 18, 1913.

7. Recorded 3:35 P. M. July 28, 1913.

(Sgn.) H. E. MORGAN,  
H. H. Waller,  
Dep. [314]

SKM Co.

282

280

July 28, 1913.

John Rosene of Seattle, Wash. to R. W. Wiley of Portland, Ore.

Sworn to before Luella Ayers, June 24th,

8. 1913.

Recorded at 40 M. past 3 P. M. July 28,  
1913.

(Sgn.) H. E. MORGAN,  
H. H. Waller,  
Dep.

Skm. Co.

1.80

July 29, 1913.

Frank W. Purdy to G. L. Gates,

Sworn to before R. McDonald of Forty  
Mile, Y. T.

Jas. McLeod

9 May 31st, 1913.

Recorded at 55 M. past 6 A. M. July 29, 1913.

By request W. E. McKinney.

(Sgn.) H. E. MORGAN,

H. H. Waller,

Dep.

July 29, 1913.

C. L. Hale to W. Meder.

Sworn to before H. J. Watkins, July 21, 1913, at Kennecott, Alaska.

10 Recorded by above at 8 M. past 6 P. M. July 29, 1913.

(Sgn.) H. E. MORGAN,

H. H. Waller,

July 29, 1913.

Carl Engstrom to W. Meder.

Sworn to before H. J. Watkins, July 21, 1913, at Kennecott, Alaska.

11 Recorded by above at 12 M. past 6 P. M. July 29, '13.

(Sgn.) H. E. MORGAN,

H. H. Waller,

Dep. [315]

**[Defendant's Exhibit No. 4—Record of Location by  
Gates for Purdy.]**

Eldorado Cr. No. 2 Below Dis. Dis. & Loc. July  
C 6th, 1913, by G. L. Gates, Attorney for  
D F. W. Purdy, Principal.

27 Commencing at this initial post, situate  
at lower center end of No. 1, Below Dis. Eldorado



Cr. and running downstream 1320 ft., together with 330 ft. on both sides. This claim is located on Eldorado Cr., tributary Wilson Cr.

Recorded by request W. E. McKinney at 7 P. M. July 27, '13.

[Seal]

(Sgn.) H. E. MORGAN,

By H. H. W.

Defendant's Exhibit 4, C—73. [316]

United States of America,  
Territory of Alaska,—ss.

I, the undersigned, United States Commissioner and Ex-officio Recorder for the White River Precinct, Third Judicial Division of the Territory of Alaska, do hereby certify that the foregoing and hereto attached one sheet bears and is a full, true and correct copy of a certain instrument recorded in Vol. 1, page 31 of the records of the above-named precinct, in my care and custody on this date.

In witness whereof I have hereunto set my hand and official seal this 6th day of January, 1914.

[Notarial Seal.] ANTHONY J. DIMOND,  
U. S. Commissioner and Ex-officio Recorder. [317]

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**[Certificate of Clerk U. S. District Court to  
Defendant's Exhibit No. 5.]**

United States of America,  
Territory of Alaska,  
Third Division,—ss.

I, the undersigned Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the attached is a full, true and correct

copy of the original Order Creating the White River Precinct, Third Division, Ter. of Alaska, as the same appears on file and of record in my office.

In testimony whereof, I have subscribed my name and affixed the seal of the said Court at Valdez, Alaska, this 2d day of April, 1914.

[Court Seal]

ARTHUR LANG,  
Clerk.

By K. L. Monahan,  
Deputy.

Defendant's Exhibit #5, No. C-73.

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**[Defendant's Exhibit No. 5—Order Establishing  
the White River Precinct, etc.]**

*In the District Court for the Territory of Alaska,  
Third Division.*

In the Matter of Creating a New Recording Precinct,  
to be Known as THE WHITE RIVER RE-  
CORDING PRECINCT, in the Third Judi-  
cial Division, Alaska.

**ORDER.**

It appearing to the Court that a necessity exists for the establishment of a new recording district, to include a part of the Copper Center Recording Precinct and the Chitina Recording Precinct, in the northeastern portion of the Third Judicial Division, Territory of Alaska, covering the White River and its tributaries to the divide on Scolai Pass, Euchre Mountain, Shushana (or Chisana) River, Snag River and Beaver River and its tributaries,—

NOW, THEREFORE, IT IS ORDERED that the said District shall be known as the White River Recording Precinct and shall begin at a point on the boundary line between Alaska and the Yukon District, Canada, at Mt. Wood; thence north along said boundary line between Alaska and the Yukon District, Canada, to a point at the intersection of the line dividing the Third and Fourth Judicial Divisions of Alaska; thence along said division line between the Third and Fourth Judicial Divisions of Alaska in a westerly direction to a point where the Tanana River crosses said line; thence in a southerly line along the watershed dividing the Nabesna and its tributaries on the west and the rivers flowing into the Tanana River on the east of said watershed; thence to Regal Mt; thence in a southeasterly direction to Scolai Pass; thence in a southeasterly direction to the point of beginning, Mt. Wood.

AND IT IS FURTHER ORDERED that the boundaries of the said Copper Center Recording Precinct and the said [318] Chitina Recording Precinct are hereby changed to conform to this order.

Done at Cordova, Alaska, this 7th day of May, 1913.

PETER D. OVERFIELD,  
District Judge.

Entered Court Journal No. C—2, Page No. 93.

Special April, 1913, Term, May 8th—25th Court Day—Thursday. [319]

[Certificate of Clerk U. S. District Court to  
Defendant's Exhibit No. 6.]

Defendant's Exhibit #6, C-73.

United States of America,  
Territory of Alaska,  
Third Division,—ss.

I, the undersigned Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the attached is a full, true and correct copy of the original Affidavit of Annual Labor found in Volume 6 of the Records of the White River Precinct, Ter. of Alaska, 3d Div., page 154, as the same appears on file and of record in my office.

In Testimony Whereof, I have subscribed my name and affixed the seal of the said Court at Valdez, Alaska, this 2d day of April, 1914.

[Seal]

ARTHUR LANG,  
Clerk.

By K. L. Monahan,  
Deputy.

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[Defendant's Exhibit No. 6—Affidavit of Annual  
Labor.]

United States of America,  
Territory of Alaska,—ss.

On this 6th day of September, 1913, before me, the subscriber, personally appeared W. E. McKinney, who being first duly sworn on oath, saith: That he is one of the owners of and is familiar with the following described placer mining claims situate in the White River Precinct and Recording District, Terri-

tory of Alaska, to wit: Claims No. 4, 5 and 6 on Little Eldorado, Claims 1, 2 and 3 Below on Big Eldorado, 2 Above on Glacier Creek and 1 Below on Glacier Creek; that during the year ending December 31, 1913, at least \$100 worth of labor and improvements was performed and made upon each of said claims; that work on No. 4 on Little Eldorado consisted of a drain 80' long, 3' deep, 21½' wide; on No. 5 it consisted of two drains one 50' long, 3' wide and 3' deep and the other 30' long, 3' deep and 21½' wide; on No. 6 it consisted of an open cut 30' long, 41½' deep and 4' wide, and a side-hill cut, and a drain 30' long and 2' deep; that on No. 1 Below Discovery on Big Eldorado it consisted of a bedrock drain 75' long, 3' deep and wide; on No. 2 Below Discovery it consisted of an open cut 40' long, 41½' deep and wide; on No. 3 Below Discovery it consisted of a drain 50' long, 21½' wide and 3' deep, also an open cut 20' long, and 5' deep; that on 2 Above on Glacier it consisted of a drain 100' long, 3' deep and wide; that on No. 1 Below on Glacier it consisted of *and* open cut 10' deep, 20' long and 20' wide; that on each of said claims other general mining work was done in addition to that above specified. That this affiant was assisted in the above work by A. P. Schultze, Alex Timewell, Miles Atkinson and Sidney Johnson.

W. E. McKINNEY. [320]



*In the District Court for the Territory of Alaska,  
Third Division.* L

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Order [Extending Time to October 15, 1914, to File  
Bill of Exceptions, etc.]**

On motion of plaintiff for an order of this Court extending the time in which plaintiff may prepare, settle and file his bill of exceptions to be used on a writ of error from the judgment of this court to the United States Circuit Court of Appeals for the Ninth Circuit, and to fix the amount of the cost bond on said writ of error or appeal,

IT IS HEREBY ORDERED that said plaintiff shall have to and including the 15th day of October, 1914, in which to prepare, settle and file his bill of exceptions.

IT IS FURTHER ORDERED that the cost bond of plaintiff in the matter of said appeal or writ of error be, and the same is hereby, fixed at the sum of five hundred (\$500.00) dollars, the sureties of said bond to be approved by the clerk of this court in case the Judge of this court is absent from Valdez, Alaska, when said bond is presented for filing.

Done in open court at Cordova, Alaska, this 10th day of April, 1914.

FRED M. BROWN,  
Judge.

OK.—MAURICE D. LEEHEY,  
E. E. RITCHIE.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 10, 1914. Arthur Lang, Clerk.

Entered Court Journal No. C-2, page No. 240.  
[322].

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Order Enlarging Time to Settle and File Bill of  
Exceptions.**

On this 15th day of October, 1914, at Seward, Alaska, came the plaintiff in the above-entitled action by his attorneys, T. J. Donohoe, O. A. Tucker and E. E. Ritchie, and stated to the Court that the record of this cause heretofore prepared in Valdez as the bill of exceptions on writ of error discloses certain omissions necessary to be supplied to complete the record on writ of error; and it appearing to the Court that said omissions can be supplied and

corrected only by reference to the court reporter's shorthand notes of the trial and the journal of the trial of this cause at Cordova, at the March, 1914, term of this court, which notes and journal are now in the clerk's office of this court at Valdez; and this being the last day of the time heretofore granted by order of this court within which plaintiff may settle and file his bill of exceptions herein;

Now, therefore, for good cause shown it is ordered by the Court here, that plaintiff may have until and including November 14, 1914, to prepare, settle and file his bill of exceptions on appeal in this case.

Dated at Seward, Alaska, October 15, 1914.

FRED M. BROWN,

Judge.

Filed in the District Court, Territory of Alaska, Third Division. Oct. 15, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered in S-1 page No. 320. [323]

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*In the District Court for the Territory of Alaska,  
Third Division.*

C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Order Settling Bill of Exceptions.**

It is hereby ordered that the foregoing bill of ex-

ceptions, consisting of the order giving leave to plaintiff to file his amended complaint and permitting defendant's amended answer to stand as his answer to the amended complaint, the amended complaint, amended answer, motion requiring defendant to make his amended answer more definite and certain, order requiring defendant to make his amended answer more definite and certain, demurrer to amended answer, minute order overruling demurrer to amended answer, reply, reporter's transcript of record of the trial including the instructions of the Court to the jury, and stipulation by counsel for both sides in open court in the presence of the jury before they retired to deliberate upon their verdict, which stipulation was then and there agreed to by the Court in the presence of the jury, plaintiff's exceptions in writing to the instructions of the Court to the jury pursuant to stipulation, defendant's request for special findings, verdict, answers to questions set out in request for special findings, motion for new trial, order denying motion for new trial, judgment, order extending to October 15, 1914, the time within which plaintiff might settle and file his bill of exceptions, order extending to November 14, 1914, the time within which plaintiff might settle and file his bill of exceptions, Plaintiff's Exhibits "A," "B" and "C," Defendant's Exhibits 1, 2, 3, 4, 5 and 6.

Done in open court at Valdez Alaska, this 14th day of November, 1914.

FRED M. BROWN,  
Judge.

[Endorsed as follows]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 14, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 8, page No. 406. [324]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

### **Assignment of Errors.**

Now comes the plaintiff in the above-entitled cause and files the following assignment of errors upon which he will rely in his prosecution of a writ in said cause:

#### **I.**

The Court erred in overruling plaintiff's demurrer to the affirmative defense of defendant's amended answer.

#### **II.**

The Court erred in refusing to give to the jury the following instruction asked by plaintiff, to which refusal plaintiff duly excepted and the exception was allowed:

"You are instructed that in this case the burden of proof is upon the plaintiff to establish that he made a legal location of a placer mining claim upon the ground in controversy, which is



a placer mining claim on Big Eldorado Creek, in the White River recording precinct, Territory of Alaska, which plaintiff located under the name of 'Surprise Fraction.' It is incumbent upon the plaintiff to show that he performed all the acts required by law to initiate and complete a placer location; and I further instruct you that the evidence in this case does establish, and the defendant admits, that plaintiff performed all the acts necessary to make a valid location of a placer claim, dating from August 30, 1913, the date of his mineral discovery thereon.

"It is further necessary for plaintiff to show that after making such location he expended upon the claim the value of one hundred dollars in labor or improvements within ninety days, in order to continue to hold the claim. This is admitted by the defendant and therefore is a proven fact in the case.

"You are further instructed that after the plaintiff has shown that he has done all the acts necessary to make a valid location of a placer mining claim, as he has done in this case, the burden then devolves upon the defendant to show by his evidence that he made a valid location of the ground in controversy, by performing all the acts required by law to complete such location, beginning with a discovery of mineral on the date claimed by him, July 6, 1913, or some other date prior to the first step in location made by the plaintiff.

“Defendant claims that on July 6, 1913, he made location of a placer mining claim on Big Eldorado Creek and called it No. 2 Below Discovery. It is admitted by the pleadings and shown by the evidence on both sides that the ground so claimed is the same tract that is claimed by the plaintiff under the name [325] ‘Surprise Fraction.’ The defendant does not claim that he made this location personally, but he does claim that it was made for him and in his name by one G. L. Gates, who, defendant claims, held a power of attorney from defendant empowering said Gates to make such location for him.

“At the time defendant claims to have located this ground through Gates as his attorney in fact, the law governing such locations in Alaska required such power of attorney to be in writing, signed and acknowledged by the principal, and recorded in some recording precinct in the judicial division wherein the mining claim was situated—in this case the Third Division—and such record of the power of attorney was required to be prior in date to the first act of location by the attorney in fact. The attorney might then proceed to make a location by performing all and each of the acts necessary for that purpose, to wit: he must make a *bona fide* discovery of placer gold within the exterior boundaries of the claim as afterward located; he must put upon the ground in a conspicuous place a notice of location describing the claim,

then mark the boundaries so that the lines might be readily traced; that is, he must so describe his claim and mark the boundaries that a later prospector, or any other person of ordinary intelligence might go upon the ground and by following the description contained in the notice of location so posted trace the exterior boundaries from post to post as erected by the locator."

### III.

The Court erred in refusing to give to the jury the following instruction asked by the plaintiff, to which refusal the plaintiff duly excepted and the exception was duly allowed:

"It is admitted by both parties that the notice of location posted upon the claim by the defendant through his alleged attorney in fact, Gates, claims 1320 feet running upstream and 330 feet on each side, but it is contended by the plaintiff the notice of location so posted upon the ground was placed upon the upper end of the ground in controversy, or at the lower end of the claim marked on Plaintiff's Exhibit "A" as No. 2 Below. If you believe from the evidence that the notice was so placed then I instruct you that the description as contained in the notice of location did not cover the land in controversy, and that at the time the plaintiff went upon the ground covered by the 'Surprise Fraction' the same was unappropriated ground so far as defendant's location was concerned and you must find for the plaintiff.

“On the other hand, it is claimed by the defendant that the location notice was originally placed at the lower end of the claim and therefore the description covers the land in controversy. It is testified by W. E. McKinney that the notice was originally posted at the lower end of the claim, and it is testified by other witnesses that after the plaintiff made his location the said McKinney moved the notice of location from the upper end of the claim to the lower end of the claim. The plaintiff by way of rebuttal on this point has introduced in evidence a certified copy of defendant’s notice of location recorded at the request of the said W. E. McKinney, which describes the claim of defendant as running 1320 feet downstream. In arriving at your conclusion as to where the notice was originally posted you should take into consideration all the evidence offered before you both by the plaintiff and the defendant concerning monuments or lack of monuments, the likelihood of the notice of location being removed, the manner in which and places where other location notices were posted upon adjoining claims located on or about the same day, and you should carefully review and weigh together all the facts and circumstances in evidence in determining in your own minds whether the defendant’s notice of location was originally posted at the upper end or at the lower end of the ground in controversy, and in that connection you may take into consideration the certified copy of defendant’s notice of location which appears upon the rec-

ords of the recording district, and introduced here in evidence." [326]

## IV.

The Court erred in refusing to give to the jury the following instruction asked by plaintiff, to which refusal plaintiff duly excepted and the exception was duly allowed:

"I instruct you that where there is a difference in the description of a mining claim between the notice actually posted on the ground and the notice of location as recorded the notice posted on the ground controls, and as it is admitted in this case that the notice actually posted upon the ground describes the mining claim as running 1320 feet upstream, it controls as to the description of the claim; therefore you will not consider the certified copy of the location notice as recorded other than as it may assist you in reaching a conclusion as to which end of the claim in controversy the notice of location was originally posted upon."

## V.

The Court erred in refusing to give to the jury the following instruction asked by the plaintiff, to which refusal plaintiff duly excepted and the exception was duly allowed:

"You are instructed that unless you believe from the evidence that G. L. Gates was, at the time he claims to have made the location of the ground in controversy, acting under a power of attorney authorizing him to locate placer mining claims for the defendant, F. W. Purdy, and



that said power of attorney was in writing, duly acknowledged and delivered to Gates and in his possession at the time he made the location of the ground in controversy, you must find for the plaintiff.

“I further instruct you that if you do believe that Gates was so authorized, you must further believe from the evidence that he made a *bona fide* discovery of placer gold upon the ground embraced within the boundaries of the claim as located, and that he posted a notice of location in a conspicuous place upon the ground, describing the claim in controversy, and that he marked the boundaries thereof by substantial monuments or posts and referred to such monuments or posts in his notice of location so that another person by reading the notice of location and guided by the monuments or posts could readily trace out the boundaries of the claim.”

## VI.

The Court erred in refusing to give to the jury the following instruction asked by the plaintiff, to which refusal plaintiff duly excepted and the exception was duly allowed:

“You are instructed that if you believe from the evidence that the notice of location posted by the defendant on the claim was originally posted at the upper end of the claim or ground in controversy, then it did not describe the ground in controversy in this action, and you must find for the plaintiff.”

## VII.

The Court erred in refusing to give to the jury the

following instruction asked by the plaintiff, to which refusal plaintiff duly excepted and the exception was duly allowed:

“You are instructed that under the law governing placer location in Alaska prior to July 30, 1913, it was necessary [327] for the locator to expend upon the ground one hundred dollars in labor and improvements within the calendar year in which the location was made, in order to continue his right to hold the claim beyond the calendar year. As the defendant claims to have made his location prior to July 30, 1913, it was necessary for him to do this \$100 worth of work or improvement before the end of the year 1913, and unless you are satisfied that he did this he is not entitled to recover in this action.”

#### VIII.

The Court erred in refusing to give to the jury the following instruction asked by the plaintiff, to which refusal plaintiff duly excepted and the exception was duly allowed:

“At the time defendant claims to have located this ground as a placer mining claim through Gates as his attorney in fact the law governing such locations in Alaska required such a power of attorney to be in writing, signed and acknowledged by the principal, and recorded in some recording precinct in the judicial division wherein the mining claim was situated—in this case the Third Division—and such record of the power of attorney was required to be made be-

fore the first act in location was taken by the attorney in fact."

### IX.

The Court erred in refusing to give to the jury the following instruction asked by the plaintiff, to which refusal plaintiff duly excepted and the exception was duly allowed:

"You are instructed that the established rules of evidence and an express statute of the territory of Alaska provide that if the weaker and less satisfactory evidence was within the power of the party, the evidence offered should be viewed with distrust.

Under this rule of oral evidence is offered of the contents of a written instrument alleged to be missing, and admitted by the Court upon a showing of the party as to the circumstances of its disappearance, the jury are the judges of the weight to be given to such oral testimony as to the contents of the alleged written instrument, and may draw their own inferences concerning the failure to produce the original."

### X.

The Court erred in refusing to give to the jury the following instruction asked by the plaintiff, to which refusal plaintiff duly excepted and the exception was duly allowed:

"I instruct you that under the evidence offered in this case it is for you to determine whether or not at the date of the location of the placer claim as set up by defendant, G. L. Gates had a power of attorney in writing, duly ac-

knowledge, from the defendant, F. W. Purdy, authorizing the said Gates to locate placer mining claims in the territory of Alaska. And unless you so find that Gates did have such a power of attorney at the time he claims to have located the ground in controversy in this action you the plaintiff.”

## XI.

The Court erred in refusing to give to the jury the following instruction asked by the plaintiff, to which refusal plaintiff duly excepted and the exception was duly allowed: [328]

“I instruct you that the defendant has pleaded in his answer that the power of attorney under which G. L. Gates claims to have acted as attorney in fact for the defendant in the location of the placer ground in controversy in this action was duly recorded on July 29, 1913, at page 280 in Volume 1 of the records of White River precinct of the Territory of Alaska. The record referred to is in words and figures as follows:

“ ‘July 29, 1913. Frank W. Purdy to G. L. Gates. Sworn to before R. McDonald of Forty Mile, May 31st, 1913. Jas. McLeod. Recorded at 55 M. past 6 A. M. July 29, 1913. By request W. F. McKinney (Sgn.) H. F. Morgan. H. H. Waller, Dep.’

“I further instruct you that this record is not a record of such a power of attorney as was required by law at the time defendant claims that Gates located the mining ground in controversy so as to authorize the said Gates to locate placer

mining ground in the Territory of Alaska for the defendant; and it is for you to determine from all the evidence whether or not the said Gates at the time claimed, presented, or caused to be presented for record in White River precinct a power of attorney in writing duly acknowledged by said defendant authorizing said Gates to locate for defendant placer mining ground in the Territory of Alaska.”

## XII.

The Court erred in giving the following instruction to the jury, to which instruction plaintiff duly excepted and the exception was duly allowed:

“The defendant claims to have made a location through Gates as his attorney in fact, on July 6th, 1913, on which day he claims to have made a discovery of valuable mineral, marked the boundaries of his claim so that the same could be readily traced and on July 27, 1913, filed his location certificate with the recorder of White River precinct, and on the 29th day of July, 1913, claims to have filed the power of attorney from the defendant Purdy to Gates with the said recorder.”

“If you find from the evidence that these acts were done at the times and in the manner testified to by the defendant and his witnesses, then your verdict should be for the defendant.”

## XIII.

The Court erred in giving the following instruction to the jury, to which instruction plaintiff duly excepted and the exception was duly allowed:



“On July 6th, 1913, at the time defendant claims to have made his location, the law in Alaska did not require that the locator should post a notice of location on the claim, or that he should even file the notice of location with the recorder, but that he may do either or both of these acts, but the location is not invalid by reason of failure to do either or because there is a mistake in the calls or courses or distances given in either a notice posted on the ground or a notice filed for record.”

#### XIV.

The Court erred in giving the following instructions to the jury, to which instruction plaintiff duly excepted and the exception was duly allowed:

“You are instructed that such power of attorney need not be recorded prior to the first step taken in making the location, and if you believe from the evidence in this case that the defendant Purdy executed a power of attorney in writing to G. L. Gates prior [329] to July 6th, 1913, and that the same was duly acknowledged, and that on July 29th, 1913, said power of attorney was given to the recorder for the White River precinct of Alaska for record and the recording fees paid then the defendant sufficiently complied with the law in that regard.”

#### XV.

The Court erred in giving the following instruction to the jury, to which instruction plaintiff duly excepted and the exception was duly allowed:

“You are instructed that if you find from a fair preponderance of the evidence that the de-

fendant Purdy executed a power of attorney in writing authorizing the said Gates to locate placer mining claims for said Purdy in Alaska, and that the same was duly acknowledged, and recorded in White River recording district, and if you further find from a fair preponderance of the evidence that the boundaries of the placer claim No. 2 Below Discovery on Eldorado creek were sufficiently marked on the ground, then you should disregard any errors in the notice posted on the claim, and your verdict should be for the defendant."

#### XVI.

The Court erred in giving the following instruction to the jury, to which instruction plaintiff duly excepted and the exception was duly allowed:

"You are instructed that while under the laws of Alaska in force prior to August 30th, 1913, it was not actually necessary to post a notice of location upon a placer mining claim, nor even to record the location notice, yet it was the custom to do either or both of these acts. Where the location notice was recorded the legal effect of it was to give constructive notice of the location to all persons and where the notice was posted on the ground it was for the purpose of aiding in ascertaining the boundaries of the claim, but failure to post any notice on the ground or even to record the location notice did not render the location void."

#### XVII.

The Court erred in giving the following instruc-

tion to the jury, to which instruction plaintiff duly excepted and the exception was duly allowed:

“You are instructed that a record of a mining location authorized by law is constructive evidence to all parties of the contents of such record, and if you find from the evidence that the location notice of the defendant Purdy was duly recorded in the office of the recorder of White River precinct and recording district of Alaska prior to the time of the alleged location by the plaintiff Sutherland, then the plaintiff Sutherland is conclusively deemed to have notice of such location, whether he has actually examined the recorded notice or not.”

#### XVIII.

The Court erred in giving the following instruction to the jury, to which instruction plaintiff duly excepted and the exception was duly allowed:

“You are instructed that while posted or recorded notices are an aid in determining the boundaries of a claim and [330] the position of the monuments which mark such boundaries, yet it is the boundaries as marked on the ground by proper stakes or monuments which really define the limits of the location, and if a difference exists between the descriptions given in the notice as posted on the ground and stakes or other monuments established thereon, then the monuments govern and control and are to be considered as correctly indicating the tract of ground included within the location of such mining claim.”

## XIX.

The Court erred in submitting to the jury the first question of defendant's request for special findings, to which question the plaintiff duly excepted and his exception was duly allowed.

## XX.

The Court erred in submitting to the jury the second question of defendant's request for special findings, to which question the plaintiff duly excepted and exception was duly allowed.

## XXI.

The Court erred in refusing to permit J. J. Ford, a witness called to testify in behalf of plaintiff, to testify to markings and descriptions on boundary posts of adjoining locations of mining claims for the purpose of showing that defendant's notice of location of the Surprise Fraction, comprising the ground in controversy in this action, does not include any part of said ground and does cover other ground, to which ruling of the Court plaintiff then and there excepted and the exception was allowed.

## XXII.

The Court erred in admitting parol testimony to vary the terms of a written instrument, to wit, the power of attorney under which defendant's alleged attorney in fact, G. L. Gates, claimed authority to locate the ground in controversy herein, it being pleaded in defendant's answer that Gates' authority to locate said ground was contained in a power of attorney appearing of record in the records of White River [331] precinct, wherein said ground is sit-

uated; said testimony being in substance as follows, to wit:

a. The witness, G. L. Gates, being called to testify on behalf of defendant, was permitted to testify over the objection of plaintiff that he had lost or misplaced a power of attorney given him by defendant, duly signed and acknowledged in Yukon territory; that said power of attorney was the authorization under which he had located the ground in controversy in this action, and was the same power of attorney which was filed for record with the recorder of White River precinct, and which said recorder purported to record. To the admission of all of which testimony plaintiff then and there excepted and the exception was by the Court duly allowed.

b. The witness, W. E. McKinney, being called upon to testify on behalf of defendant, was permitted to testify over the objection of plaintiff that he was a witness to the execution of the power of attorney from defendant Purdy to Gates described by the witness Gates; that said power of attorney authorized said Gates to locate placer mining claims in Alaska; that Gates had given said power of attorney to said witness McKinney to file for record with the recorder of White River Precinct, and that he had so filed the same for record, on the 29th day of July, 1913. To all of which testimony plaintiff then and there objected and the objection was by the Court duly allowed.

### XXIII.

The Court erred in denying plaintiff's motion for a new trial.



## XXIV.

The Court erred in entering judgment herein in favor of defendant and against plaintiff.

## XXV.

The Court erred in entering a decree in favor of defendant and against the plaintiff granting a perpetual injunction against plaintiff enjoining and restraining him from asserting title to the land in controversy, this being an action of ejectment brought by plaintiff, and neither defendant's [332] amended answer nor his proof presenting to the Court any ground or basis for equitable relief.

WHEREFORE plaintiff prays that the judgment of the District Court of Alaska, Third Division, may be reversed.

O. A. TUCKER,  
T. J. DONOHOE and  
E. E. RITCHIE,

Attorneys for Plaintiff and Plaintiff in Error.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Nov. 14, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [333]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Petition for Writ of Error.**

Now comes the plaintiff and says: That on the 10th day of April, A. D. 1914, the above-entitled court made and entered its judgment herein, in favor of defendant and against the plaintiff, ordering and adjudging that the plaintiff take nothing by its cause of action, and that his complaint be dismissed, and that the defendant have judgment against him for costs; and further adjudging and decreeing that the defendant is the owner and entitled to the sole possession of the mining property described in said judgment and that the plaintiff has no interest therein.

That in said judgment and in the proceedings had prior thereto, certain errors were committed to the prejudice of the plaintiff, all of which more fully appears in the assignment of errors filed with this petition.

WHEREFORE plaintiff prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the errors so complained of, and that the transcript of the record, testimony, proceedings and papers in this cause, duly authenticated, may be sent to the said United States Circuit Court of Appeals, for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may be proper therein.

O. A. TUCKER,  
T. J. DONOHUE and  
E. E. RITCHIE,  
Attorneys for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 14, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [334]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Order Allowing Writ of Error.**

On this 5th day of March, A. D. 1915, comes Dan D. Sutherland, the above-named plaintiff and plaintiff in error herein, by his attorneys of record. And the said plaintiff and plaintiff in error by his said attorneys of record filed herein and presented to the court his petition praying for the allowance of a writ of error, and praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit. And at the same time and place said plaintiff presented and filed herein his assignment of errors intended to be urged by him.

Now, therefore, in consideration of the premises, and the court being fully advised in the premises, it is

ORDERED, that the aforesaid writ of error be and the same hereby is allowed upon the said plaintiff's giving bond according to law in the sum of five hundred dollars for the costs of appeal and upon said said writ of error.

IT IS FURTHER ORDERED that a transcript of the record and proceedings and papers in the cause, duly authenticated, be sent to the United States Circuit Court of Appeals [335] for the Ninth Circuit.

Dated at Valdez, Alaska, this 5th day of March, A. D. 1915.

FRED M. BROWN,  
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 8, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered court Journal No. 9, page No. 2. [336]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS, that we, Dan D. Sutherland, as principal, and Anton

Carlson and H. T. Whitley, as sureties, are held and firmly bound to F. W. Purdy, respondent, upon this writ of error, and to his heirs and assigns, in the sum of five hundred dollars (\$500.00), lawful money of the United States, to be paid to the aforesaid F. W. Purdy, his heirs and assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents.

Dated this 6th day of March, 1915.

WHEREAS, Dan D. Sutherland, the above-named plaintiff, lately at a session of the District Court for the Territory of Alaska, Third Division, in said court, between Dan D. Sutherland, plaintiff, and F. W. Purdy, defendant, judgment was rendered against said plaintiff and in favor of said defendant, and the said plaintiff, Dan D. Sutherland, having obtained from said Court an order allowing a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment rendered in the aforesaid action, and a citation, directed to said defendant, F. W. Purdy, is about to be issued, citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in San Francisco, California.

Now, the condition of the above obligation is such that if the said plaintiff, Dan D. Sutherland, above-named, shall prosecute his said writ of error to effect, and shall answer all damages and costs that may be awarded against him, if he fails to make his



plea good, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 6th day of March, A. D. 1915.

DAN D. SUTHERLAND, [Seal]  
Principal.

By T. J. DONOHUE, [Seal]  
His Attorney of Record.

ANTON CARLSON, [Seal]  
Surety.

H. T. WHITLEY, [Seal]  
Surety.

The sufficiency of the sureties on the foregoing bond and the bond itself is approved this 8th day of March, A. D. 1915.

FRED M. BROWN,  
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 8, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,  
Plaintiff,

vs.

F. W. PURDY,  
Defendant.

**Writ of Error [Original].**

The President of the United States of America, to  
the Honorable FRED. M. BROWN, Judge of  
the District Court for the Territory of Alaska,  
Third Division, Greeting:

Because in the record and proceedings, as also in  
the rendition of judgment, which is in the District  
Court before you, between Dan D. Sutherland, the  
original plaintiff and plaintiff in error, and F. W.  
Purdy, the original defendant and defendant in er-  
ror, manifest error hath happened, to the damage  
of said Dan D. Sutherland, the plaintiff in error, as  
is said and appears by the petition herein:

We, being willing that the error, if any hath been,  
should be duly corrected, and full and speedy justice  
done to the parties aforesaid in this behalf, do com-  
mand you, if judgment be therein given, that you  
under your seal, distinctly and openly, send the rec-  
ord and proceedings aforesaid, with all things con-  
cerning the same, to the Justices of the United  
States Circuit Court of Appeals for the Ninth Cir-  
cuit, in the City of San Francisco, in the State of  
California, together with this writ, so as to have the  
same at said place in said Circuit on the 7th day of  
April, 1915, that the record and proceedings afore-  
said be inspected, the said Circuit Court of Appeals  
may cause further to be done therein to correct  
those errors what of [339] right, and according  
to the laws and customs of the United States should  
be done.

WITNESS, The Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, the 8th day of March, in the year of our Lord one thousand nine hundred and fifteen.

[Seal]

ARTHUR LANG,  
Clerk.

Allowed by:

FRED M. BROWN,  
Presiding Judge in the District Court for the Territory and District of Alaska, Third Division.

Filed in the District Court, Territory of Alaska, Third Division. Mar. 8, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page No. 1. [340]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Writ of Error (Copy).**

The President of the United States of America, to the Honorable FRED. M. BROWN, Judge of the District Court for the Territory of Alaska, Third Division, Greeting:

Because in the record and proceedings, as also in the rendition of judgment, which is in the District Court before you, between Dan D. Sutherland, the

original plaintiff and plaintiff in error, and F. W. Purdy, the original defendant and defendant in error, manifest error hath happened, to the damage of said Dan D. Sutherland, the plaintiff in error, as is said and appears by the petition herein:

We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that you under your seal, distinctly and openly, send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, together with this writ, so as to have the same at said place in said Circuit on the 7th day of April, 1915, that the record and proceedings aforesaid be inspected, the said Circuit Court of Appeals may cause further to be done therein to correct those errors what of [341] right, and according to the laws and customs of the United States should be done.

WITNESS, The Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, the 8th day of March, in the year of our Lord one thousand nine hundred and fifteen.

[Clerk Seal]

ARTHUR LANG,  
Clerk.

Allowed by:

FRED M. BROWN,  
Presiding Judge in the District Court for the Territory and District of Alaska, Third Division.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 8, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page No. 1. [342]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Citation on Writ of Error [Original].**

The United States of America,—ss.

**The United States of America**, to F. W. Purdy and to Maurice D. Leehey, His Attorney of Record, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Third Division, wherein Dan D. Sutherland, the above-named plaintiff, is appellant, and you are respondent and appellee, to show cause, if any, there be, why the judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.



WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 8th day of March, in the year of our Lord, one thousand nine hundred and fifteen.

FRED M. BROWN,  
Judge of the District Court for the Territory of  
Alaska, Third Division.

[Seal]

Attest: ARTHUR LANG,  
Clerk.

Filed in the District Court, Territory of Alaska,  
Third Division. Mar. 8, 1915. Arthur Lang, Clerk.  
By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page No. 2. [343]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Citation on Writ of Error [Copy].**

The United States of America,—ss.

The United States of America, to F. W. Purdy and  
to Maurice D. Leehey, His Attorney of Record,  
Greeting:

You are hereby cited and admonished to be and  
appear at the United States Circuit Court of Ap-  
peals for the Ninth Circuit, to be held at the City of

San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Third Division, wherein Dan D. Sutherland, the above-named plaintiff, is appellant, and you are respondent and appellee, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 8th day of March, in the year of our Lord, one thousand nine hundred and fifteen.

FRED M. BROWN,  
Judge of the District Court for the Territory of  
Alaska, Third Division.

[Official Seal]      Attest: ARTHUR LANG,  
Clerk.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. March 8, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Journal No. 9, page No. 2. [344]

*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Acceptance of Service of Papers on Writ of Error  
by Clerk of Court.**

United States of America,  
Territory of Alaska,—ss.

T. J. Donohoe, being first duly sworn, deposes and says: I am one of the attorneys of record for the above-named plaintiff; that the above-named defendant does not reside in Valdez, Cordova, or Seward, Alaska, those being the three places in which the above-named court holds terms of court in the Third Division of the Territory of Alaska; that the place of residence of the above-named defendant is unknown to the above-named plaintiff or to his attorneys of record; that I am informed and believe that said defendant resides somewhere in Yukon Territory, Canada; that I am well acquainted with Maurice D. Leehey and J. J. Finnegan, the only persons who were ever attorneys of record for the above-named defendant; that on the 14th day of April, 1914, the said J. J. Finnegan withdrew as attorney of record for said defendant, and on that date a minute order was made and entered in the journal of the

above-entitled court, under the direction of the Court, noting such withdrawal; that the said Maurice D. Leehey is now, and since said 14th day of April, 1914, has been the only attorney of record for said defendant; that said Maurice D. Leehey resides in the State of Washington and is not now in the Territory of Alaska; that it is impossible for the plaintiff or his attorneys [345] to make service of any papers in connection with this writ of error upon the defendant or his attorney of record within the time allowed by law in which to file this writ of error in the Circuit Court of Appeals; that the defendant and his attorney of record, being nonresidents of any of the places of holding terms of the above-named court in the Third Division of the Territory of Alaska, have failed to comply with the provisions of Rule 17 of the rules of the above-named court, now in force and effect, in this, that they and each of them have failed to designate a place in any of such places of holding court where notices and copies may be served upon them.

T. J. DONOHOE.

Subscribed and sworn to before me this 8th day of March, 1915.

[Notarial Seal]      ANTHONY J. DIMOND,  
Notary Public for Alaska.

My commission expires Mar. 18, 1917.

**“RULE 17. SERVICE UPON PARTY OR NON-RESIDENT ATTORNEY.**

In all cases where a party commences or appears in an action or proceeding in person, or by an attorney not a resident of the place of holding court,

or who has not an office therein, he shall endorse on his complaint or other pleading, a designation of the place in such place of holding court, where notices and copies may be served on him; and if he fails to so designate, then the deposit of such notice or copy for him in the clerk's office shall be sufficient service."

I, Arthur Lang, Clerk of the above-entitled court, hereby certify that the above and foregoing is Rule 17 of the rules of the District Court for the Territory of Alaska, Third Division, and of the whole thereof, adopted by said Court on the 31st day of December, 1902, and that said rule has ever since been and now is in full force and effect.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Valdez, Alaska, this 8th day of March, 1915.

[Seal of District Court.]      ARTHUR LANG,  
Clerk of the District Court for the Territory of  
Alaska, Third Division.      [346]

United States of America,  
Territory of Alaska,—ss.

THIS IS TO CERTIFY, that I, Arthur Lang, Clerk of the above-entitled court, pursuant to the provisions of Rule 17 governing the procedure and practice of said court, have this day been served with, and received for and on behalf of the above-named defendant and his attorney of record, true and correct copies of the assignment of errors, petition for writ of error, order allowing writ of error, bond for cost on writ of error, writ of error, and citation on writ of error.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the above-entitled court this 8th day of March, A. D. 1915.

[Seal of District Court.]      ARTHUR LANG,  
Clerk of the District Court for the Territory of  
Alaska, Third Division.

[Endorsed]: Filed in the District Court for the  
Territory of Alaska, Third Division. March 8, 1915.  
Arthur Lang, Clerk. By T. P. Geraghty, Deputy.  
[347]

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*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

**Praeceptum for Transcript.**

To the Clerk of the Above-entitled Court:

You will please make, certify and transmit forthwith to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, at San Francisco, a copy of the record in the above-entitled cause as a return to the writ of error heretofore sued out of said Circuit Court of Appeals to review the Judgment in said cause, consisting of the following named files and records and proceedings in said cause, to wit:

1. Order giving leave to plaintiff to file his amended complaint and permitting defendant's amended answer to stand as his answer to the amended complaint.
2. Amended complaint.
3. Amended answer.
4. Motion requiring defendant to make his amended answer more definite and certain.
5. Order requiring defendant to make his amended answer more definite and certain.
6. Demurrer to amended answer.
7. Minute order overruling demurrer to amended answer.
8. Reply.
9. Reporter's transcript of record of the trial, including the instructions of the Court to the jury, and stipulation by counsel for both sides in open court in the presence of the jury before they retired to deliberate upon their verdict, which stipulation was then and there agreed to by the Court in the presence of the jury.
10. Plaintiff's exceptions in writing to the [347½] instructions of the Court to the jury pursuant to stipulation.
11. Defendant's request for special findings.
12. Verdict.
13. Answers to questions set out in request for special findings.
14. Motion for new trial.
15. Order denying motion for new trial.
16. Judgment.

17. Order extending time to and including October 15, 1914, in which plaintiff might prepare, settle and file his bill of exceptions.
18. Order extending time to and including November 14, 1914, within which plaintiff might prepare, settle and file his bill of exceptions.
19. Plaintiff's Exhibits "B" and "C."
20. Defendant's Exhibits 1, 2, 3, 4, 5 and 6.
21. Order settling and allowing bill of exceptions.
22. Assignment of errors.
23. Petition for writ of error.
24. Order allowing writ of error.
25. Bond for cost on writ of error.
26. Writ of error and copy thereof.
27. Citation on writ of error and copy thereof.
28. Acceptance of service of papers on writ of error by clerk of court.
29. This praecipe.

T. J. DONOHOE and  
E. E. RITCHIE,

Attorneys for Plaintiff and Plaintiff in Error.

Filed in the District Court, Territory of Alaska,  
Third Division. Mar. 8, 1915. Arthur Lang, Clerk.  
By T. P. Geraghty, Deputy. [348]

[Certificate of Clerk U. S. District Court to  
Transcript of Record.]

*In the District Court for the Territory of Alaska,  
Third Division.*

No. C-73.

DAN D. SUTHERLAND,

Plaintiff,

vs.

F. W. PURDY,

Defendant.

United States of America,  
Territory of Alaska,  
Third Division,—ss.

I, Arthur Lang, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the above and foregoing and hereto annexed 348 pages, numbered from 1 to 348, inclusive, are a full, true and correct transcript of the records and files of the proceedings in the above-entitled cause, as the same appears of record and on file in my office.

That this transcript is made in accordance with the plaintiff's and appellant's praecipe on file herein.

I further certify that the foregoing transcript has been prepared, examined and certified to by me, and that the cost of such preparation, examination and certificate, amounting to \$34.20, was paid to me by T. J. Donohoe and E. E. Ritchie, attorneys for the plaintiff and plaintiff in error, Dan D. Sutherland.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed the seal of this court at Valdez,  
Alaska, this 8th day of March, A. D. 1915.

[Seal] ARTHUR LANG,  
Clerk of the District Court for the Territory of  
Alaska, Third Division. [349]

[Endorsed]: No. 2583. United States Circuit Court of Appeals for the Ninth Circuit. Dan D. Sutherland, Plaintiff in Error, vs. F. W. Purdy, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Third Division.

Filed March 18, 1915.

FRANK D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.



